

Pro L A VV, *Hargrave*
O.R, *15 V. 6*

A DISCOURSE
THEREOF, IN
K foure Bookes. *506.a. 26*

Written in French by Sir *But*
HENRIE FINCH Knight, *not*
his Maiesties Sericant published
at L A W. in French. I
approband. The French
And done into English by the *book*
same Author. *has a diff. t*

little, & diff. in
CICERO. *very much.*

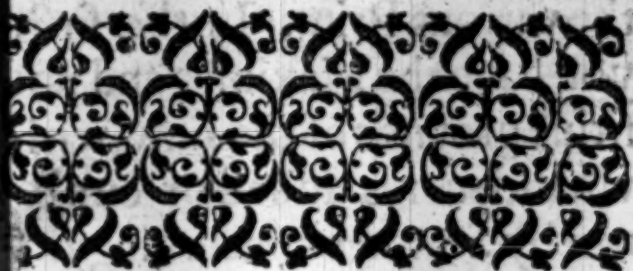
Leges nobis charae esse debent, Non propter
literas, sed propter earum rerum qui-
bus descriptum est utilitatem, & eorum
qui scripserunt sapientiam.

LONDON,
Printed for the Societie of
Stationers. 1627.

OF
A DISCOVERY
IN THE
REIGN OF
HENRY II.



**MVSEVM
BRITANNICVM**



To the R E A D E R.

THis Booke, being formerly published in the proper and genuine Language, had, as it well deserued, good acceptance; the Author and the Work mutually adding to each others Esteeme. And herein the Matter was no lesse profitable, than the Manner vsfull and ingenious; so that this onely of all the Bookes of Law (as concerning the Method) is without President. Herein you may finde a

*Not corrected for
the French
books differ in
little order
& considerable
obligation
in matters
of the*

To the Reader.

triple relation distinguished by the various Print. In the first, you haue the Maximes and positive grounds of the Law, with whatsoeuer is added or explained by Statutes concerning the same; Which taken apart will afford a continued sensible discourse. In the second is contained the proofes and examples of those Maximes. And because that precious Flower of the Crowne, the Kings Prerogative, may not bee valued in the hands of a common person, such cases as concerne the King are seuered from the rest.

To impart good is to improve it, which was one cause of the translation of this Book: yet is it not thereby made so facile as to descend to vulgar capacities; witnesse the verie phrase, the termes of Art, excluding,

To the Reader.

cluding all hope of accrue to
Lay-conceited opinions. Nei-
ther speaketh it at aduenture,
but as the Author taught, and
no otherwise; whose fame will
affirme, and none wil denie, but
that he best knew how to fit and
adorne his owne worke.

Now remaineth onely to ex-
tenuat the faults, either those
material in the copie, or literall
in the Print, the first a iudicious
Reader is able to supplie, a litle
labour will correct the rest: He
that is curteous wil remit both.
To plot and to perfect at once
is to bee more than man. Such
was the paine to compose that
the child wasted its owne pa-
rent, therein neuerthelesse be-
ing vnhappy preuenting the
blessing of Perfection, and be-
comming an Abrotiue; But be
you the Guardian, so much It
inuities,

To the Reader.

invites, the Author merits more. His proposed end was to enrich others by this expression of his Love, cover therefore the faults occasioned by an Error of Love, and redeeme Him that for your sake is imbarqued in the common Censure of all Men.

J. L.



THE FIRST BOOKE of Law.

CHAP. I.

Of the Law of Nature.

Law is an Art of wel
ordering a Civile Societie. In
Greece it is called νόμος ἢ νόμι-
μα *a distribuendo*, because
it giues and distributes right
to euerie one. In Latine it hath its name
Lex, not *a ligando*, as some would haue it,
although Law indeed be *vinculum ciuitatis*,
nor *a legendo*, which is, to reade; though I
find that to please *Bracton* most; but as hee
that best could tell deriues it, *a legendo*,
which is to choose, because of the choice &
exquisite wisdom that is in it. *Nam ut il-
li* (saith *Tully* speaking of the Grecians)
aquitatis, sic nos delectus vim in Lege ponimus,
& proprium utrumque legis est. The Hebrues
call it תורה (*thorah*) from the roote ירה (*jarah*)
B which

Bract. lib. 1. ca. 3.
Cicel. 1. de Legib.

The first Booke

which is to teach: because it is the doctrine of truth, as Plato saith in his ninth booke *ἐν τῷ ὅμῳ* *Leges ad hominum doctrinam ponuntur*. So that Law carrieth with it, and hath (as it were) inclosed in the name and nature of it, these three lawes *ἐν χρυσοῦ καὶ ἀργύρῳ* and golden chaine of all good learning, *Lex veritatis, Lex Iusticie, Lex sapientie*. And therefore is not onely *ἐπιστήμη*, *Scientia*, but *ἐπιστήμη ἀληθὴς*, *Scientificissima*. Whereupon Platotelleth vs, *Nomen menti consentaneum*, (that is, to God, whom the Philosophers call *νῆς*, or *mens*, which is Truth, Wisdome, and Iustice it selfe) *possidet divina nobis & admirabilis lex*. So that the name it selfe doth shew the Authour from whenceit came: and as he saith, *Qui tanti talem genuere parentes*.

Plato li 4 de Reipub
ἐν τοῦ αὐτοῦ ἀποφωτισμοῦ
ὁμοῦ καὶ τῆς αἰσθητικῆς
θεῖας καὶ ἀνθρώπου
ἐκείνου τοῦ νοῦ.

Lawes are Natiue or Positiue. Tully in his Oration *pro Milone*, takes vs out this Lesson: *Est enim hæc non scripta sed nata lex, quam non didiscimus, accepimus, legimus, verum è natura ipsa arripimus hausimus, expressimus; ad quã nõ docti sed nati, non instituti sed imbuti sumus*. In his first booke *de Legibus*, he doth againe repeate it. *Constituendi vero iuris ab illa summa Lege capiamus exordium, quæ seculis omnibus ante nata est quam scripta Lex ulla*: Where this Natiue Law hee calleth *sumam legem*, as that from which all other lawes doe streame:

Natiue, are those Lawes which are in vs of themselves, and therefore unchangeable and perpetuall.

These

These are two fold, like those two great lights which God hath set in the firmament of our heart, Nature and Reason, For being proper to a man, as hee is a man and reasonable creature, they may be diuided as reason it selfe is diuided. They that haue trauailed most in the grounds of Nature, distinguish that excellent facultie of Reason (which of all earthly creatures man onely hath) into two other faculties, *νῆς* or the mind, and *διάνοια* or the reasoning part: *νῆς* they call that facultie of the soule that offreth vnto vs things cleare & light-some of themselues, without any further reasoning or discourse. By *διάνοια* they meane that facultie of the soule, that by discourse of reason doth deduce and draw one thing from another. From hence the masters and professors of the art of reason, make indgement (which is the flower of all reason, and in effect nothing els but *ratio coniuncta*, reason set together) to be *Noeticum* or *Dianoeticum*. We by their example may distinguish those which wee call Native Lawes, and are the foundation of all other lawes into Primitiue, which is that they call *Noeticum*, we, the law of Nature, or secundarie rules of reason, which is their *Dianoeticum*, with vs the Law of reason. And these verie names of *νῆς* and *διάνοια* or *λόγισμος*, which is all one reason and the discourse of reason, both *Plato* and *Tully* speaking of the lawes doe giue them.

The law of Nature is that soueraigne reason

Lex natura est ratio summa inuenta in hominis natura. qua iubet ea qua faciendū sunt, prohibetque contraria.

Cic. lib. 2. de Leg.

reason fixed in mans nature, which minneth common principles of good and euill. In effect nothing else but those *leges communes* or *Communes noticie*, which the Philosophers speake of; That men must liue peaceably together: That we are not to do vnto another that which we would not haue done vnto vs: That Iustice is to be done to all men, and such like. Of this *Tully* speaketh 2. *de legibus*. *Principem illam legem & ultimam mentem esse dicebant*. Where he likewise calleth it the high & supreme law of all. And in another place, *Natura iuris ab hominis repetenda natura*, because the light herof as the light of the Sun shineth most clearely, and in the eyes of all men.

CHAP. 2.

Of the Law of Reason.

THE law of Reason is that which deduceth principles by the course of sound reason. Wherof *Tully* saith, *Ratio cum est in mente hominis confirmata & consecrata, lex est*: And againe, *Lex est radius diuini luminis*, and *clara ratio similis*. *Plato*, by way of Poeticall fiction doth imagine that there were in man, and (as it were) two fooles of his counsell that did rule him, Pleasure and

Cic. lib. 1. de Leg.

Plat. 1. de Legib.

Paine

Paine. Each had two other affections to attend them, Hope of good things to come, and Feare of future euils, whereby mens minds were haled and pulled hither and thither, and diuersly distracted. Then to gouern both, God set in man λογισμὸν, the reasoning or discoursing part, to reach what is good or bad in either; which hee calleth νόμον αἰγιόχοιο χρυσὸν καὶ ἱερὸν, the golden and sacred rule of reason. Wee may terme it, that vncorrupt reason which *Adam* had at the first in full perfection: But through *Adams* fall (that brought sinne into the world, and the fruit of sinne, Blindnesse and corruption) that excellent image of Reason is now so wonderfully defaced euen in the best and wisest, that the light of this, as the light of the Moone, shineth more obscurely: But yet shineth, so that from it all the other Lawes receiue their Light.

And hereupon are grounded more or lesse cleerely, diuers rules of reason, that euerie where goe for vndoubted Oracles, which (confirmed by iudgement, learning, and much experience, and rightly and wel applied) are so many starres and shining lights, to direct our course in the arguing of any case: yea such is their singular and incomparable vse, that, as Lords paramount, they rule and ouerrule the grounds themselves. And rather than any of these (rightly vnderstood) should faile, the verie maxims and principles of the positieue law

will yeeld, as to a higher and more perfect Law.

CHAP. 3.

Of rules taken from other learnings.

THE rules of reason are of two sorts; some taken from fozeigne learnings, both diuine & humane; the rest proper to Law it selfe.

Of the first sort are the principles, and sound conclusions from fozeigne learnings; Out of the best and very bowels of Diuinitie, Grammer, Logicke; also from Philosophie natural, Politicall, Oeconomicks, Morrall, though in our reports and yeere-bookes they come not vnder the same tearmes, yet the things which there you finde are the same; for the sparkes of all Sciences in the world are raked vp in the ashes of the Law: and well doth one

Cic. l. 1. de legibus.

say, *Non ex Pratoris edictis, neque a 12 tabulis, sed penitus ex intima philosophia hauriendi iuris disciplina est.* Hee that will take the whole body of the Law before him, and goe really and iudicially to worke, must not lay the foundation of his building in Estates, Tenures, the gift of Writs, and such like, but at those currant and sound principles which our bookes are full of.

First from Diuinitie, the doctrine
Religion

Religion, the head and master-peece of all the rest, whereof S. *Augustine* saith truly, *Omnium legum est inanis censura, nisi divina legis imaginem gerat.* From hence we haue these two rules.

Aug. lib. 9. de Civitat. dei.

To such lawes of the Church as haue warrant in holy Scripture, our Law giveth credence.

34 H. 6. 40.
Prisot. Anols leys que eux de St. eglise ont en auciens escriptura, coisend par nous a doner credence i car ceo est common ley, sur que tous maner leys sont fondues, 4 Eliz. 265.

The Sabbath day is no day for lawe sales, vpon a fine leuied with Proclamations according to the Statute, 4 H. 7. Cap. 24. if any of the Proclamations be made on the Lords day, all the Proclamations are erroneous, for the Iustices may not sit vpon that day, but it is a day exempt from such businesse by the Common-law for the solemnity of it, to the intent that all people may apply themselves that day to praier and seruing of God.

No Plea shall be holden *Quindena pasche*, because it is alwaies the Sabbath, but it shall be *Crastino quindena pasche*.

F. N. B. 17. f.

If a Writ of *Scire facias* out of the Common-place beare *Teste* vpon a Sunday, it is error, because that is not *Dies iuridicus in Banco*.

1 Eliz. Dy. 163

No sale vpon a Sunday shall bee said a sale in market ouert to alter the property.

12 E. 4. 8.

Of Grammer, the rules are infinite in the Etymologie of words, and in the construction of them, what their nature is

B 4

single,

single, what ioyned with other: among the rest which need not be remembered, this one wee haue common in our Bookes.

2. Words, in construction must be referred to the next antecedent, where the matter it selfe doth not hinder it.

32. H 8. Dy.
46. b.

An Endictment of murder, found in this sort, That *Eliz. fuit in pace &c. quosque A. vir prefat. Eliz. de D. in Com. S. Yeoman*, did kill her, is good; for the addition Yeoman, must of necessity referre to the husband, because a woman cannot bee a Yeoman; but an endictment *quousque Alicia S. de D. in Com. S. uxor I. S. Spinster, &c.* is not good against *Alice S.* for there Spinster being an indifferent addition, both for man and woman, must referre to *I. S.* which is the next antecedent, and so the woman hath no addition. So of an enditement against *I. S. seruient I. D. de D in Com. Middle Butcher*: This is not good, for, Seruant is no addition, and Butcher referreth to the Master, which is the next antecedent.

9. E. 4. 48.

From Logick;
In the Maxime of causes and effects

3. The cause ceasing, the effect both likewise cease.

5. E. 4. 8. b.

The King granteth an Office to one

will, and ten pound fee during life *proofficio illo*, now if the King put him from his office the fee shall cease.

The Executor, nor husband (after the death of his wife gardein in foccage) shall retaine the Wardship, for the Gardein hath it not to his owne vse, but to the benefit of the Heire: and the Executor, or husband haue not the affection which the Testator or his wife had, which was the cause that the Law gaue them the Wardship. 7. Edz. 293.6.

If a stroke be giuen the first day of May, and the King pardon him the second day of May, all felonies and misdemeanors, the party smitten dieth the third day of May, so as this is no felony till after the pardon, yet the felony is pardoned, for the misdemeanor is pardoned, and therefore all things pursuing are also pardoned. 13. Edz. 401.

The King hath a Ward, *pur cause de gard*, and after maketh liuery to the first Ward, now the second Ward shall not sue liuery. 13. E. 4. 10.6.

If two Coparceners make a Lease reseruing a rent, they shall haue this rent in common, as they haue the reuerfion: But if afterwards they grant the reuerfion, excepting the rent, then they shall bee Ioynt-tenants of the rent.

It is no principall challenge to a Iuror that he hath married the parties mother, if she be dead without issue, for the cause of fauour is remoued. 14. H. 7. 2:

4. Things

4. Things are construed according to that which was the cause thereof.

44. E. 3. 14. b.

14. Aff. pl. 20.

21. E. 4. 68. b.

3. E. 3. 84.

A man makes me swear to bring him money to such a place, or else hee will kill me, I bring it him accordingly : This is felony in him. So if hee make me swear to surrender my estate vnto him, and I do afterwards, this is a disseisin to me.

One imprisoned till hee be content to make an obligation at an other place, and afterwards he doth so, being at large, yet he shall auoid it by dures of imprisonment.

Outlary in trespassse is no forfeiture of land, as outlary of felony is, for though the not appearing be the cause of outlary in both, yet the force of the outlary shall be esteemed according to the hainousness of the offence, which is the principall cause and foundation of the proceffe.

A man and feme sole haue a villein, and afterwards entermarry, and the villein purchases land, they shall not haue the land by entierties, but by moities ioyntly, or common, as they had the villein.

5. According to that which was the beginning of it.

33. Aff. pl. 7.

If a Seruant (departed out of his Masters seruice) kill his Master vpon a malice that he beare him whilest hee was his Seruant, it is pettie treason.

A. cred

A. erects a Shop vpon the Kings Free-
hold, the King grants the land to B. in fee;
A. before entrie or seisor of the Shop by
the Kings Patentee, continueth his posses-
sion and dieth seised. This is no discent
to toll the Patentees entry: for by his first
erecting of the Shop, hee could gaine no-
thing against the King.

10. Eliz. Dy.
266. b.

6. And therefore a deriued power cannot
be greater than that from which it is
deriued.

The Atturney of one that is disseised
cannot make claime off from the land, if
the disseisee himselfe durst haue gone to
the land.

Litlet.

The Bailiffe of a disseisor shall not say,
That the Plantiffe neuer had any thing in
the land, for the Master himselfe shall not
haue that plea, because he is not Tenant of
the Freehold.

28. Ass. pl. 4.

The Seruant shall bee estopped to say,
The Freehold is his Masters, by recouery
against his Master, though the seruant
himselfe be a stranger to it, for he shall not
bee in better condition than hee in whose
right he claymeth.

2. E. 4. 16.

7. Things are dissolved as they bee con-
tracted.

An Obligation, or other matter in wri-
ting cannot bee discharged by an agree-
ment by word.

19. E. 4. 1. b.

In

5. B. 7. 33.

In an annuity growing by prescription *rien avere* is a good plea, for this prescription is a matter in fait: but in an annuity by deed it is no good plea, without shewing an acquittance.

4. H. 7. 7. b.

When a man auoides the Kings title, by as high a matter of record as the King claimeth, he may haue it by way of plea, without being driuen to his petition, though the King bee entituled by double matter of record; as one is attainted of treason by Parliament, and an office findes his lands, whereby the King seiseth them, The party may alledge restitution by Parliament, and a repeale of the former act.

8. Things grounded vpon an ill and void bold beginning cannot haue a good perfection.

10. El. 344.

An Infant, or a feme couert make their will, and publish it, and after dying of full age, or sole, yet the will is nothing worth.

One disseised of two acres in D. releaseth all his right in all his lands in D. and deliuereth it to a stranger, to bee deliuered ouer to the disseisor as his deed, such a day: before which day, the disseisor disseiseth him of an other acre in D. and then the release is deliuered ouer to him, yet nothing of the right of this third acre passeth by the release.

9. H.

9. Hee that claimeth paramount, a thing
shall neuer take benefit noz hurt by it.

Two Ioyntenants, one makes a lease
for yeares of his moiety, reseruing a rent,
and dyeth. The suruiuing Ioyntenant shall
haue the reuerſion of his moiety, but not
the rent, for hee commeth in by the first
feoffor, and not vnder his companion. So
of the wife, where the husband being lessee
for yeeres in her right, maketh a lease of
part of the terme, reseruing a rent.

2. & 3. El. Dy.
187.

An Executor recouereth and dieth inte-
state, administration of the goods of the
first testator is committed to I. S. I. S. shall
not sue execution vpon this recovery.

Dower cannot be assigned, reseruing a
rent, or with a remainder, ouer, for shee is
in from the husband, and not from him
that assigneth dower.

10. According to the end.

Vouchee commeth into the Court to
be viewed, and being viewed, is awarded
of full age; yet hee shall not be driuen to
answer, till he come in to the same intent
by other Proceſſe.

31. E. 3. Roynder
22. yd. 10.

The vouchee, vpon a *Grand cape ad va-
lentiam*, shall not lose the land, though he
cannot saue his default, for the proceſſe is
onely to this end to haue him so appeare.

19. E. 4. 3.

A man that is warned by Writ to an-
swer

30. aff. pl. 2.

swere to a matter shal not be driuen to answer any other matter than is contained in that Writ, though the King bee partie. As if by office it be found, that lands in chief descended to I. S. a foole naturall, and that A. occupieth them, whereby a *Scire facias* goeth out against A. to answer why the lands should not bee seised into the Kings hands for the Ideocie of I. S. A cometh in and pleads, That I. S. when he was of perfect memorie, made a release to one B. who infeoffed A. This is good enough without shewing any licence of alienation to discharge himselfe for the purchasing of those lands.

In the maxime of Subjects and adiuncts.

11. **Where the foundation faileth, all goeth to the ground.**

3.E.3.74.b.

A Church appropriated to a spiritual corporation, becommeth disappropriate, if the corporation be dissolued.

49.E.3.8.

A disseisor of lands in ancient demesne the Lord confirms vnto him to hold at the Common Law, the disseisee recentreth; now the land shall be ancient demesne againe: for the estate (whereupon the confirmation should inure) is defeated.

Lit.

When an estate (to which a warranty is knit) is vndone, the warranty also is vndone. As if Tenant in taile discontinue, and the discontinuee is disseised (or make a feoffe

a feoffement vpon condition) in whose possession a collaterall ancestor of the issue in tail re easeih and dieth, the issue is barred. But if the discontinuee enter vpon the disseisor (or vpon the feoffee for the condition broken) the issue is restored to his formedon.

12. Things incident cannot be seuered.

Estouers, or wood graunted to be burnt in such a house, shall goe to him that hath the house, by whatsoeuer title: for one is inseperably incident to the other.

12. El. 381.

Lord & Tenant by fealtie and homage, the Lord releaseth his fealtie; this is void: for fealtie is incident to homage.

7. E. 4. 111

An office of skill and diligence, or annuities, *pro concilio impendendo*, cannot be forfeited by attainder of Treason.

12. El. 379.

A Court baron is incident to a mannor, and Court of Pipowders to a Faire: therefore one cannot grant the mannor or faire, reseruing those courts. Where one holdeth of a man to keepe his Castle the Lord cannot grant his Castle gard, reseruing the Castle.

19. H. 8. Br. incident 34.

31. E. 3. off. 441.

13. Things by reason of another, are of the same plite.

The custome of Gavelkind is not changed, though a fine or recouerie bee had of the same at the Common Law: for this is a custome

a custome by reason of the land, and therefore runneth alwaies with the land.

6.E. 6. Dy. 72. b.

But otherwise it is of lands in auncient demesne, partible among the males: for there the custome runneth not with the land simply, but by reason of the auncient demesne: and therefore because the nature of the land is changed by the fine or recouerie from ancient demesne to land at the Common Law, the custome of parting it among the males is also gon.

F.N.B. 31. b.

An erroneous recouerie had of lands in Boroughenglissh, the puisne sonne shall haue a Writ of Error, because the land it selfe goeth to him. So shall all the sonnes of lands in Gauelkind.

42.E. 3. 3.

Two Coparceners make partition, and one couenants with the other to acquit the land: now if the Couenantee alien his part, the Alience shall haue a writ of Couenant.

Personall things.

14. Cannot be done by another.

7.H. 4. 19.

Suite of Court cannot be done by another.

32 E. 4. 34.

A man cannot excuse himselfe of a contempt (as of not seruing the Kings Proccesse) by Attornie, but in proper person.

15 Cannot be granted ouer, as matters of pleasure, ease, trust, and authozitie.

A licence to hunt in my parke, to goe to Church ouer my ground, to come into my house, to eate and drinke with me, cannot be granted ouer. So of a way granted for life ouer my ground. 12.H.7.25.
7.H.4.36.

The Patentee for life of an office of trust, as to be a Chamberlaine of the Exchequer: Squire of the bodie cannot assigne it, vnlesse it be specially limited in his Patent that he may. For then he might grant it to one in whom the King hath no trust, or that would be negligent &c. 11.E.4.1.

The keepership of a Park, Stewardship, Bailiwick of Husbandrie, &c. for life, cannot be granted ouer, because they are offices that require skill and diligence. 12.El.179.

A. licenceth B. to doe an act: B. cannot grant this licence to another. Br. licenceth 25.

A Warrant of Atturney made to one to deliuer seisin, he cannot grant this his authoritie ouer. 19.H.8.10.

16. Die with the person.

When a Corporall hurt or dammage is done to a man, as to beate him &c. if hee or the partie beaten die, the Action is gon. 12.H.8.12.

Lesser Couenants to pay quitrents during the terme, & dieth, his executors shal not pay them: for it is a personall Couenant, which dieth with the person. 1. & 2. T. & M.
114.

Among the disagreeable arguments.

First from those that differ onely in a certain

C

tainc

taune respect and reason, not in deed and in nature.

Things doe inure diuersly, according to the diuersitie of

17. Time.

26. Aff. pl. 66.

Lands giuen in Frankmariage, reseruing a rent, the reseruatiō is void till the fourth degree past, and afterwards good.

Person viz.

18. The same person.

14. H. 8. 6.

One that hath a rent charge going out of the wiues lands, releaseth it to the husband and his heyres: the husband yet shall not haue it, but it shall inure to him by way of extinguishment onely, as seised in right of his wife.

19. Seuerall persons.

1. & 2. P. & M.
104.

A man makes a lease of a Mannor, except an acre, this acre is no part of the manor, as to the lessor, but as to him that hath right to demand the manor by an eigne title, it remaineth parcell, and therefore he shall make no foreprise in his Writ.

11. E. 4. 2.

If tenant in taile and his issue disseise the discontinuee of tenant in taile; and tenant in taile die, whereby the lands dissend to the issue: Now he shall be remitted; and shall be in as tenant in taile against every strange

stranger, and derraigne the first warrantie;
but not as against the discontinuee, because
he was *Particeps Criminis*.

Then from Belatines.

20. **No man can doe an act to himselfe.**

A man cannot present himselfe to a be-
nefice, make himselfe an officer, nor sue
himselfe: and therefore when a man ha-
ving right to land, hath the freehold cast
vpon him by a latter title, he shall bee sayd
in of his ancient title, because there is no
bodie against whom he may sue, but him-
selfe, and he cannot sue himselfe.

13.H.8.22.

Lit. 147.b.

No more can a man summon himselfe.

8.H.6.29.

And therefore if the sherife suffer a com-
mon recouerie, it is error, because hee can-
not summon himselfe.

3.El.Dy.188.

A man cannot be both Iudge and partie
in a suite.

4.M.B.com.23.

And therefore if a Iustice of the Com-
mon place be made a Iustice of the Kings
Bench: though it be but *hac vice*, it deter-
mineth his patent for the Common place.
For if he should be Iudge of both Benches
together, he should controll his own iudg-
ments: for if the Common place erre, it
shall be reformed in the Kings Bench.

Of Comparisons.

From the equals.

C 2

21. Things

21. Things are to be construed
secundum equalitatem rationis.

(c) 27. Eliz. Cas.
 3. 136. *Sir Wills*
Herberts case.

Vpon a recognisance acknowledged by the Ancestor, or a Iudgement in an Action of Debt giuen against him: if he die seised of two acres, whereof one holden in Borough English, or hauing issue two Daughters which make partition, or if he die without issue, whereb part of his land discendeth to the heire of his fathers part, and part to the heire on the part of the mother: in all these cases if one onely be charged, he shall haue contribution against the other: for they are in *aquali iure*.

D 26. al. pl. 37.

If two, foure, or more men being seuerally seised of land, ioyne in a recognisance, all their lands must equally be extended.

Bract. l. 1. cap. 3.

And this is a Logicall vertue, a kinde of equitie as *Bracton* calleth it, where he saith, *Equitas est rerum conuenientia quæ paribus in ciusis paria iura desiderat, & omnia bene coequiparat: Et dicitur equitas quasi aqualitas.* Whose nature is to amplifie, inlarge, and adde to the letter of the Law.

Especially this shineth & sheweth forth it selfe in the exposition of Statutes, by extending things there provided to mischiefs in the like degrees, whereof the examples euery where are pregnant, and in guiding the grounds and maximes of things, that newly startvp, by the rule of the Common Law.

(4) 23. H 8. Fitz.

Vses at the Common Law were (a) nothing, yet in time gaining greater regard

to be imputed among inheritances, are deemed as other inheritances at the Common Law. So as a *possessio fratris* shall bee of them, and of lands in Borough English, the vse shal discend to the puisne. And now also these vses beeing turned into estates, shall be demeaned in all respects as estates in possession.

So when (b) Custome createth inheritance in Copihold lands, and maketh the lands discendable, then shall the Law direct the discents according to the maximes and rules of the Common Law, to haue a *possessio fratris*, and such like: but not in collateral things, as Tenancie by curtesie Dower, discend to toll an entrie, &c.

(b) Co. 4. 23

From the greater and the lesse.

22. The greater both containe the lesse.

By a pardon of murder, manslaughter is pardoned.

An attaint supposing a verdict to haue passed before two Iustices, whereas it passed before foure, is good enough.

A recovery pleaded of three acres, where it was of sixe, is good enough.

A Condition that I. shall not infeoffe I. S. is broken, if I. infeoffe him and I. D.

A Copiholder of a mannor, where the custom giueth libertie to demise in fee, may demise it for any lesse estate, without other prescription.

Where the custome is, that a man shall

C 3

not

18 E. 3. 8.

not deuise his lands for any higher estate than for terme of life, yet if a deuise bee in fee, and the deuisee claime but for life, the deuise is good.

3 & 4 E. & M.
Dj. 15. 6. 1.

By the statute 32. *Henric. 8.* that giueth power to deuise two parts of ones lands, a deuise of the whole had bin good for two parts, though the Statute 34. & 35. *H. 8.* of explanations had not beene made.

23. A matter of higher nature determineth a matter of lower nature.

21 H. 7. 5.

A man hath liberties by prescription, & after taketh a grant of those liberties by Letters Patents from the King, this determineth the prescription, for a matter in writing determineth a matter in fait.

33. H. 8. Dj. 50.

If an offence, which is murder at the Common-law bee made high Treason, no appeale shall lie of it, because the offence of murder is drowned, and it is punishable as high treason only, whereof no appeale lyeth.

24. The moze worthie thing draweth to it things of lesse worthinesse.

11. H. 4. 31.

An adulterer takes away another mans wife, and puts her in new clothes, the husband may take the wife with her clothes.

10. El. 323. b.

A boxe insealed with charters, it shall goe to the heyre with the Charters, & not to the Executors.

A base Myne where there is Ore, shall be the Kings for the worthinesse of the Ore.

The bodie of a man is more worthie than land, therefore land shall follow the nature of the person: 3. El. 238.

As a villein shall make free land to bee villein land, but villein land shall not make a free-man to be a villeine.

So the Kings land which he hath in his naturall capacitie, shall be demeaned according to the priuiledge and prerogatiues of his bodie royall.

And therefore

25. Things accessarie are of the nature of the principall.

A seruant procureth another to kill his master: This is no pettie Treason, in the seruant, because it is but felony in the other which is the principall. 40 Aff. pl. 25.

7. H. 6. 19. b.

A Parson grants an annuitie with a *Nomine pane*, the successor shall be charged with the *Nomine pane* due in his predecessors life, and not his executors.

The profits of the office of a Filizer, &c. cannot be put in execution vpon a recognisance, Statute, &c. because the office it selfe, being an office of trust, cannot. 26. H. 3. Dy. 7. b.

Tith is not payable of Okes vsually topped and lopped (though it be euerie seven or eight yeares) for the branches are of the nature of the principall (that isto say) the 26. El. Molins.

Oke it selfe) for which, no Tithe is to bee paid.

26. A mans owne wordes are bolde, when the law speaketh as much.

30. *off. pl. 8.*

Lands giuen to two, & *uni eorum diutius uiuenti*, they make partition, and one dyeth; yet the lessor shall haue again the moitie of him that dieth, for *uni eorum diutius uiuenti* are but idle words, because (without them) the Iointenant, by course of Law is to haue all, if he doe suruiue.

From the rule of methode.

In things of for malitie

27. The generals must go before, and the specials follow after.

(c) *The rule of the Register.*

In a Writ the (c) generall shall be put in demand, and in plaint before the special: as land before pree, pasture, wood, iuncarie, marish, &c. wood before Alders, willowes, &c.

28. The more worthie is to be set before the lesse worthie.

Ibid.

The entier thing shall be demanded before the moitie part or parts.

Ibid.

The thing of greater dignitie before that which is of lesse: as a mease before land, a Castle

Castle before a messuage or mannor.

In a repleuin if it be of two Cattels, one quicke and the other dead, the liuing thing shall be first demanded. *ibid.*

Where one hath the presentment to a Church two turnes, and another the third turne: he that hath the third turne, bringing a *Quare impedit*, shall not begin with his own turne first, but with the other two turnes.

Next are the precepts of Naturall Philosophie.

29. Law respecteth the bonds of Nature.

Affection for the prouision for the heires males that one shall ingender, brotherly loue, &c. are good considerations to raise a vse: but long acquaintance and familiaritie are not.

The sonne may maintaine his father, & one brother another.

Brothers or cosins shall not wage battell in a writ of right.

A Statute that maketh it felonie to receiue or giue meate and drinke to one that committeth such & such an offence knowing it, stretcheth not to a woman that receiueh or giueth meat & drink to her husband in such a case.

30 The Law iudgeth and esteemeth of all according to their nature: both persons & their

their ages, things, actions, and the time
of the doing them.

In persons,

It looketh to the excellencie of some, & gi-
ueth them singular p^ruiledges and pre-
heminences aboue the rest. As to the
King, the Queen his wife, Noblemen,
and Peeres of the Realme. Also vnto
them of the Church.

It tendreth the weakenesse and debilitie
of others; As of

Men out of the Realme, or in prison, Femes
Couert (and therefore fauoureth them
for their dowres) infants, men vnlit-
tered. Ideots out of their right minde,
or without all vnderstanding, as those
that are bozne dumbe deafe, and blinde,
or hauing other imperfections.

If a disseisor die seised, the disseisee bee-
ing all the while within age, Couert baron
in prison or out of the Realme, it shall be
no discent to toll the entrie of the disseisee.

Vpon a lease made to a husband & wife,
shee shall not bee charged after the Hus-
lands death, for wast done by him in his
life time.

A woman shall be indowed of the best
possession of her husband: as if the hus-
band held of I. S. by iij.d. who held ouer
of

of another by xx.d. and I. S. release to the husband (so as now the husband holds by xx d) the wife being indowed of this land, shall hold onely by the third part of iij.d. and not of xx.d.

An Infant, Ideot, and a man of *non sane* memorie, may enter, or haue an action to auoid their feoffements.

If a dumbe person bring an action, hee shall plead by *prochein amy*.

31. Strangers not parties nor parties.

Lessee for yeares grants a rent charge, & surrenders, yet the rent shall be paid during the yeares. 1, 2, 1, 2, 3.

So if he in the reuerſion grant a Rent charge during the terme, and then the lessee surrendreth vnto him, he shall pay the rent during the terme: for a stranger (that is, the grauntee of the rent) for his benefit shall say, that the terme continueth, & that it is determined.

And therefore

Things done in anothers right.

A person out-lawed or excommunicated may haue an action as executor of another man.

And a villeine in such case against his Lord: for they recouer not their owne but to anothers vse.

32. It disfauoureth other some.

Aliens neither bozne within the Realme
nor free denizens, that they shal not par-
ticipate of the priuiledges of naturall
bozne subiects.

Especially aliens that are enemies.

Alien enemies shal not haue so much
a personall Action, which other Aliens
may.

An obligation made to an alien enemy
shall goe vnto the King.

Any bodie may seise the goods of an
alien enemy, to his owne vse.

Touching their ages.

33 It holdeth

xxj their full age to make good any
they doe.

xxij their age of discretion.

And therefore

That a competent age to bind a man
matter of marriage.

xij to bind the woman.

ix to deserue her dowry.

In things

34. It respecteth euerie one according to
worthinesse. As

Life and libertie most; the person above
his possessions; freehold and inheritance
more than it doth chattels; reall chat-
tels more than personall.

None shall haue iudgement to recouer in
an action of wast, where the wast commeth
but to 12.d or such a pettie summe, for *De*
minimis non curat lex.

A lease for life, the remainder for yeres,
the remainder ouer in fee, an action of wast
lieth for him in the remainder, against les-
see for life: for the meane estate for yeaes
is not regarded. Otherwise it were if the
immediate estate of the remainder were an
estate for life.

A villeine infranchised for an hower, is
foreuer. So infranchised vpon condition,
the condition is voide, and the infranchise-
ment absolutely good.

If a man for feare and simplicitie will
confesse himselfe guiltie of a felonie, yet
the Judge must not record that confession,
but suffer him to plead not guiltie: & that
is in *favorem vite.*

35. A matter in the right more than a mat-
ter in possession.

In

3 E. 3. 88.

In auowrie or annuitie, aide shal not be
of a person, if the plaintife be seised by the
hands of the same person, because it is
the persons owne wrong to denie it.

Otherwise in a *Cessavit*, for that is in the
right for the land.

14 H. 7. 5. K. b. l. c.

In an action of Trespasse against tenant
for life, who pleads villenage in the plaintife,
and the plaintife is found franke and
no villeine, yet he in the reuersion is not
stopped by this verdict: for the thing it self
whereupon the reuersion dependeth is not
in demand, and the plaintife shall recover
onely dammages: neither can he in the reuersion
haue a writ of error or attaintr
on it.

Otherwise it is in a *Natino habendo*:
there the right of villenage commeth in
question, and he in the reuersion may haue
an error or attaintr.

Pet it fauoureth

36. Possession where the right is equal

A man purchaseth at one time seuerall
lands holden of seuerall Lords by Knights
seruice, and dieth: the Lord that first
happeth the Wardship of his heire, shall
haue it.

3 E. 1. 396.

Husband and wife purchase socage land
vnto them and the heires of their body,
hauing issue within fourteene yeres of age.

Now if the Grand-mother of the part of the mother of the issue doe first seise the bodie, shee shall haue the Wardship, and not the Grand-father of the part of the father of the issue.

37. Matters of profit, or interest largely: of pleasure, ease, trust, authority, or limitation strict.

A licence to hunt in my Parke, or walke in my Orchard, extends but to himselfe, not to his seruants, or other in his company, for it is but a thing of pleasure, otherwise it is of a licence to hunt, kill, and carrie away the Deere, for that is a matter of profit. 13 H. 7. 13.

Way granted to Church ouer my land, extends not to any other but himselfe, for it is but an easement. 12 H. 7. 25. b.

A reuerſion granted to two ioyntly, and the Tenant attunes to one, it is a void atturment. 11 H. 7. 12. b.

If the Sheriffe behead one that should be hanged, it is felony. 35. H. 6. 58. b.

The King licenceth one to alien the third part of his land, and he alieneth all, it is a void alienation for all. 4 E. 6. 68. b.

A lease is made to A. and B. for their liues, A. dieth, B. shall haue all during his life, for it is an interest.

But if a Lease be made to I. S. during the life of A. and B. there (if one of them dye) the estate is vtterly determined, for that is a limitation.

38. There.

38. Therfore these may be countermanded, so cannot those.

9. E. 4. 4. b.

(a) 1. E. 3. 2.

(b) 28. H. 8. Dy.

32.

(c) Park. 4.

34. E. 4. 3.

Park. 13. b.

A licence to come to my house to speak with me: (a) Goods bailed ouer, to deliuer to I. S. or (b) to bestow in almes. (c) A letter of Attourney to deliuer seisin: all these may bee countermanded before they be done.

But if I present I. S. to a Church, I cannot after vary and present a new, for a kind of interest passeth out of mee.

So if I deliuer an Obligation as a scrow into a Strangers hand, to bee deliuered to the obligee, vpon condition performed, for the Obligee is as it were partie or priuy to the deliuerie.

39. Matters of substance more than matter of circumstance.

21. H. 7. 24. b.

Pleas in barre, and replications (though the Plantiffe be afterwards non suit) make an estopple, for they are expresse allegations & material. As in debt vpon an obligation if the Defendant plead in barre an acquittance made at D. or if the defendant plead an acquittance, and the plantiffe reply, that it was made by dures of imprisonment at D. now in another action, neither the defendant shall plead that the acquittance, nor the plantiffe that the dures was at an other place: But a matter in the writ.

or count, makes no estopple, for they are but supposels:

As in a formidone and claime by discent from I. S. or a mortdancestor, as sonne and heire to I. S. ; yet in another formidone hee may claime from I. D. and shall not bee estopped.

No more shall recitalls make any estop-
pell, for they are not materiall. As where
A. reciting that hee is seised in fee of the
manner of D. graunteth a rent out of it to
B. this shall not estoppe A. to say that hee
had nothing in the manner.

33. H. 6. 10. 11.

**39. Things executed and done, more than
things executorie, and to doe.**

A feme disseisers taketh a husband, the
disseisy releaseth to the husband, after-
ward a diuorce is had for precontract:
yet the release remaineth good, because it
was executed.

32. H. 8. Br. Darn
replewment 18.

A feoffment made to the vse of ones wil,
if his will be declared before or at the time
of his feoffment; it cannot be altered, be-
cause it is executed.

20. H. 7. 11.

Otherwise it is of his will declared af-
ter.

Possibilitie of things.

And therefore

**10. Nothing to be void, that by possibi-
D litle**

38. Therfore these may be countermanded, so cannot those.

9. E. 4. 4. b.

(a) 1. E. 5. 2.

(b) 28. H. 8. D.

32.

(c) Park. 4.

14. E. 4. 1.

Park. 15. b.

A licence to come to my house to speak with me: (a) Goods bailed ouer, to deliuer to I. S. or (b) to bestow in almes. (c) A letter of Attourney to deliuer seisin: all these may bee countermanded before they be done.

But if I present I. S. to a Church, I cannot after vary and present a new, for a kind of interest passeth out of mee.

So if I deliuer an Obligation as a scrow into a Strangers hand, to bee deliuered to the obligee, vpon condition performed, for the Obligee is as it were partie or priuy to the deliuerie.

39. Matters of substance more than matter of circumstance.

21. H. 7. 24. b.

Pleas in barre, and replications (though the Plantiffe be afterwards non suit) make an estopple, for they are expresse allegations & material. As in debt vpon an obligation if the Defendant plead in barre an acquittance made at D. or if the defendant plead an acquittance, and the plantiffe reply, that it was made by dures of imprisonment at D. now in another action, neither the defendant shall plead that the acquittance, nor the plantiffe that the dures was at an other place: But a matter in the writ.

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As in a formidone and claime by discent from I. S. or a mortdancestor, as sonne and heire to I. S. ; yet in another formidone hee may claime from I. D. and shall not bee estopped.

No more shall recitalls make any estoppe, for they are not materiall. As where A. reciting that hee is seised in fee of the mannor of D. graunteth a rent out of it to B. this shall not estoppe A to say that hee had nothing in the mannor.

33. H. 6. 10. b. 6

39. Things executed and done, more than things executorie, and to doe.

A feme disseisers taketh a husband, the disseisy releaseth to the husband, afterward a diuorce is had for precontract: yet the release remaineth good, because it was executed.

32. H. 8 Br. Darn
rehearsals 18.

A feoffment made to the vse of ones wil, if his will be declared before or at the time of his feoffment; it cannot be altered, because it is executed.

20. H. 7. 11.

Otherwise it is of his will declared after.

Possibilitie of things.

And therefore

10. Nothing to be boide, that by possibilitie

D

litte

little may bee good.

15.H.7.10.

Lands giuen to a married man and another mans wife, and the heires of their two bodies, is a good estate in taile (and that presently executed as some thinke) for the possibilitie that they may entermarie.

1.H.4.1.

A mesualltie is giuen in taile, reseruing a rent, this is good : for the tenancie may escheate to the donee, & then the donor shal distraine for all his arrerages.

41.E.3.11.6.

A man han hath issue a daughter, and leaueth his wife priuiment in seint: the wife may detaine the charters of her husbands lands from the daughter, for the possibilitie that it may bee a sonne that shee goeth withall.

42. *A mutual recompence.*

An assumption or promise doth then only binde, when it is made vpon good consideration of another thing.

Cesti qui vse may grant his vse without consideration, as he may his horse or other chattell : but he cannot raise a vse without good consideration. And this consideration must be some cause or occasion meritorious, amounting to a mutual recompence in deed or in law.

A writ of annuitie shall be maintained by a parson against a Vicar, vpon an Ordinance of the ordinarie, if there be *Quid pro quo*.

In Actions,

43. It yeeldeth fauour, when for the doing of it there is

Necessitie.

Funerall expences shall first of all bee discharged by executors. *Br. execut. 172.*

A man may milke a Cow that hee hath by returne irreplegiabie. And that is for the necessitie.

A man in his owne defence for the necessitie of the sauing of his life: & a champion in a writ of right for the necessitie of triall, may kill another. *4.E.6.19.*

Whether referre

44. **Conformitie, which is a kind of necessitie.**

Rent must be demanded, though no man be vpon the land to pay it.

Br. for. Mar. 121

Where an infant in ward marrieth himselfe, yet to haue the forfeiture of the marriage, the Lord must tender him one.

40.E.3.30.b.

He that pleadeth in the auoidance of a fine, That the parties to the fine had nothing; must shew who had.

But it is not trauerfable, but only shewed for Conformitie.

45. **Of Colour.**

D 2

IF

41. E. 3. 28.

If the heire indow the ancestors wife, though she were not dowable, yet she shall hold in dower.

22. Aff. pl. 64.

Where a Court hath no colour to hold plea (as a Court Baron of land not holden of the mannor) all is void.

But where there is colour (as if a Court Baron hold plea of land within the Man- nor) though it be by plaint, where it should be by Writ originall; yet the iudgement rendred, is only voydable by writ of Errour.

A woman grants a reuersion, and marries with the grantee, if the tenant pay him the rent generally, it is no Attournement: for he hath colour to pay it him, as seised in the right of his wife.

46. **It passeth Acts in law higher than those that are done by the partie.**

49. E. 3. 15.

Vpon the grant of a rent, the Tenaunt cannot attorne nor put the grantee in possession by an Oxe or such like, because it is another thing: but vpon the recouerie of rent, the Sherife may.

Little.

Parceners may compell partition, so cannot Ioyne-tenants, nor tenants in common.

2. & 3. P. & M.

134.

29. Aff. pl. 23.

For equalitie of partition among Coparceners, a rent granted shall be a fee simple, without words (heires) and issuing out of the lands, without so expressing it in the grant.

4. 2. H. 7. 5.

Also things that otherwise cannot, may passe

patte without deed, as a rent, reuerſion, ſeigniorie, way auowſon, compoſition, to preſent by turne.

(b) 21.E.3.7.

(c) 11.H.4.3.

(d) 28.H.5. Dyer

^{29.}
Fit. N.B. 34.v.

Parceners may haue a *Quare impedit* one againſt another (that is, the eldeſt daughter may haue it againſt the reſt, if ſhe be diſturbed of her preſentment.)

So cannot Ioin-tenants, nor Tenants in common.

47. It reputeth that men will alwaies Deale for their owne beſt aduantage.

And therefore

46. Beleeueth againſt the partie, whatſo-
euer is to his owne prejudice.

For the time of doing
things:

It countenanceth moze

48. Things done in time of peace, than
in time of warre.

A diſſeiſin and diſcent in time of warre,
ſhall not toll the entrie of the diſſeiſee. Lit. 97.

Uſurpation in time of warre gaineth no poſſeſſion; but the other may haue an aſ-
ſiſe of darreine preſentment (that notwith-
ſtanding) if his anceſtor preſented laſt be-
fore. 7.E.3 darreim pre-
ſentment 2.
Fit. N.B. 31.

49. **Things done in the day, moze than in the night.**

1. Mar. 1726.

Rent payable at a day, the partie hath all the day till night to pay it: but if it bee a great summe, as 500. or 1000. l. hee must be readie as long before the Sun set, as the monie may be told: for the other is not bound to tell it in the night.

A man must not distreine in the night time for rent behind.

Where things are fit to be straitned to a time, it esteemeth (according to the nature of the things)

50. **Sometimes a whole day sufficient.**

Where goods are lost in warre, and recovered from the enemy by another of the kings subiects, the owner shall haue them againe, if he make fresh suite before the Sunne set, else not.

51. **Sometimes a whole yeare.**

The Lord loseth his villeine for euer, if a villeine flie into ancient demesne, & there continue a yeare and a day, without claime of the Lord.

Recoverie in a Writ of right, and fines executed, bind all persons though they haue right, that lay not to their claime within a yeare.

The King cannot grant a protection to indure longer than a yeare.

52. The third offence it esteemeth more heynous.

The third Writ not returned by the Sherife, is a contempt, whereupon an attachment lieth.

Politteall precepts follow.

The Law fauoureth

53. Things for the Common-weale.

A man may iustifie the doing of a wrong in things that sound for the Common-weale. 29.H.8.D7.366.

As in time of warre, to make Bulwarkes in another mans soyle without licence. To rase ones house on fire, in safegard of the neighbors houses.

A Sherife may breake open the dores of ones house to take a felon. But not to serue a *Capias* in an action of Debt or Trespasse: for that is a particular case, and not for the Common-weale.

Fishermen may iustifie their comming vpon the land adioyning to the sea, to drie their nets: for fishing is for the Common-wealth, and sustenance of all the Realme. 2.E.4.186.

A mill-stone that is lifted vp to be pick- ed and beaten, cannot be distrained, for it 14.H.8.35.

remains parcel of the mill, which is a thing for the Common-wealth.

22.E.4.49.

Things brought into an Inne or Faire, or Market; or cloth lying in a Tailors shop, or a horse that is a shooing, shal not be distreined.

Publique quiet.

And therefore

54. **Common error goeth for a Law.**

3.E.3.7.

An acquittance made by a Maior in his owne name onely (where the towne is incorporate by the name of Maior, Sherife, & Burgesse) shall bee allowed for good, if there bee an hundred precedents and more of like acquittances. And that is for common quietnesse.

Manxels case f. 2.

Whether a common recouerie be a barre vnto an estate taile or no, is not to be disputed, because a great part of the inheritance of the Realme doth depend vpon it.

Of this kind are those Deconomickes.

The husband and the wife are one person.

And therefore

The wife is of the same condition with her husband.

Franck

Frænck if he be free, Denisen if he be an English man, though she were a neif before or an alien borne.

Fitz. N. B. 78. 2.
Abridgement of as-
sises p Br. denise 2.

55. They cannot sue one another, or make any grant one vnto the other, or such like.

If the (a) woman marrie with her obligor, the debt is extinct, and she shall neuer haue action against the Co-obligor (if another were bound with him) because the suit against her husband, by enter-mariage was suspended. And therefore being a personal action, and suspended against one, it is discharged against both.

(a) 21. H. 7. 29. b.

So, if a feme sole baile goods to one, and marrie with the baile.

Likewise the husband cannot incoffee his wife, but vpon a feoffement made vnto her by a stranger, he may deliuer seisin vnto her by Letter of Attornie; for thereby himselfe giueth nothing.

Park. 40.

56. Upon a ioynt purchase during the co-uerature, either of them taketh the whole.

If the husband alien land &c. so giuen, she shall recouer the whole, in a *Cui in vita* after his death, and the warrantie of one of them or his ancestors, is a bar of the whole against them both.

39. H. 6. 45.
21. R. 2. iudg. 63.

And if a feoffement be made to the husband and wife, and a third person, the third person

Littlelet. 65.

person taketh one moiety, and the husband and wife the other moiety.

The husband is the womans head:

And therefore

§8. All she hath is her husbands.

The personall things she hath are meerly his; but reall things, whether land, rents, &c. or chattels reall, and things in action he hath onely in her right: yet so, as of reall chattels & things in action, he may dispose at his pleasure, and shall haue the reall chattels if he ouer-lieue. Of things in action, her selfe may dispose by will.

Littlet. 148.

If Tenant in tail enfeoffe a woman and die, and his issue within age take her to wife, he shall be remitted, and the woman now hath nothing: for hee cannot sue any formedon in this case, vnlesse he will sue against himselfe, because by the enter-marriage himselfe is seised in her right.

*24. Eliz. Ply.
418.*

If one that hath a lease for yeares, grant his terme to a feme Couert, and another, or if a feme sole and another be Ioynt-tenants for yeeres, and shee take a husband, yet the estate of the feme and ioynture doth continue, so as the suruiuer of the wife, or of the other shall haue the whole: and if a stranger oust them, her husband and shee must ioyne in an *electione firme*, and the feme shall haue iudgement as well as the husband

husband : And (a) in pleading he may say, That they are possessed in her right. Neither can the husband, where the wife hath a terme for yeeres, either deuise it to another by his will (for she hath an estate in it before and at the time of his death, which preuenteth the deuisee) or grant a rent charge out of it, for she suruiuing is remitted to the terme, and therefore shall auoid the charge, but by an expresse act he might in his life time haue giuen it away. But if a woman hauing chattels personall take a husband, the law deueth the propertie out of her, and vesteth it in her husband onely.

(a) 1. *Sh. Pl.*
191.

14. *Eliz. Pl.*
419.

14. *Eliz. Pl.*
Id.

And if goods bee giuen to a feme Couert, and another, the ioynter is straight way seuered, and the husband and the other are Tenants in common; and the executors of the husband shall haue all the goods that were his wiues.

31. *H. 7. 39.*

But in an action of debt vpon arrerages of an accompt (where one was receiuer to the feme whilest she was sole) they both must ioyne, and that although the auditors were assigned during the couerture for the verie cause of action, that is, the receipt (whereunto the assignement of auditors is but a thing pursuant) was in her right; yet the husbands release of an obligation made to the feme, or where goods were taken from her whilest she was sole, shall be good against the wife if he die. But if he die without making such a release, the wife shall

16. *E. 4. 2.*

7. *H. 6. 1.*

39. H. 6. 37.

1. Eliz. Play. 191

shall haue an action vpon the obligation, and not the executors of the husband: Likewise the wife suruiuing, or her executors if shee die, shall haue those things in action, and not the husband; or she may make her husband her executor, and then hee shall recouer them to her vse. But a lease for yeares, which the wife, shall bee the husbands, if shee die before him: for that is a thing in possession and not in action.

59. *Her will is become his will, and subiect vnto it.*

Vpon a feoffement to a feme Couert, shee taketh nothing vnlesse her husband will agree; and where one is bound to enfeoffe the husband and wife, the husbands refusall is the refusall of them both; but where the husband and wife are ioynt purchasers, the husband may make a feoffement and liuery vpon the land, which shall worke a discontinuance, though the wife be in presence vpon the land and will not agree. If they bargain and sell the wiues land by Indenture, and the vendee grant vnto them for the same a yeerely rent, her acceptance of this rent, after her husbands death, doth not barre her of the land, although the acceptance be an agreement to the bargain, but the bargain being but a contract, is the bargain of the husband onely, and not of the wife: if shee make
are-

a release, obligation, or such like, it is meerly voide. If both her husband and she baile goods to one, they shall not ioyne in an action of derinuc, for it is onely his bailement, and void as vnto her. In an accompt vpon a receit, by the hand of the plantiffes wife, the defendant may wage his law; hereupon it is that the wife can neuer answer in any action without her husband. And if in an action of trespassse against them, the wife come in by *Cepi corpus*, and the husband doth not appeare, she must be let at large without any mainprise till her husband doe appeare: but hee appearing, may answer without her, therefore a protection cast by the husband serueth for the wife also, because she cannot answer without him.

Last come the Morall rules.

60. The Law fauoureth right.

When two are in a house, or other tenements, and one lay claime by one title, the other by an othertitle, the Law adiudgeth him in possession that hath the right to haue the tenements.

Little. 158.

And therefore

61. Suffereth things against the principles of Law, rather than a man to be without his remedy.

A

4. H. 7. 40.

A man that is outlawed may bring an action to reuerſeit, and outlawry there is no plea.

F. N. B. 69. b.

The Tenant ſhall haue a repleuin againſt the Lord that did wrongfully diſtreine, though the Beasts bee come backe to himſelfe, becauſe hee can haue no action of treſpaſſe againſt him.

11. H. 7. 10.

A man (after that iudgement is paſſed againſt him) ſhall plead againſt the King a Charter of pardon, or any ſuch thing done meane betwixt the verdict and the iudgement, becauſe againſt the King hee can haue no *Audita querela*. Otherwiſe it is, againſt a common perſon.

Thateth wrong.

So that

62. No man ſhall take a benefit of his owne wrong.

31. H. 6. bar. 60.

A man is bound to appeare before the Juſtices at a certaine day, at which day he is in priſon at the parties ſuit, ſo as he cannot come, the bond is ſaued. Otherwiſe it is if he were in priſon for felony, or any other miſdemeanor, for that is his owne fault.

27. H. 8. 11. &
Br. court. 2.

An Infants appeale ſhall not ſtay till his full age, for the defendand ſhall not haue aduantage of his owne wrong.

13. H. 7. 10.

One in execution ſcapes, and the Gailor
gets

gets him againe, the party if hee will, may haue him to remaine in execution for him still, for the escape is his owne wrong.

And therefore,
63. Of it selfe p̄iudiceth no man.

If a feoffement be made to two ioyntly, one of them cannot deraigne the warrantie without the other. Yet if a Villeine and another purchase ioyntly, and the Lord of the Villeine enter into a moitie, he may deraigne the warrantie alone, for his moitie: for there the seuerance groweth by act in law.

48.E.3.17.

He that misdemeaneth authoritie, that law giueth him (as if one come into a Tauerne, and will not goe out in seasonable time; or distreine for rent, and kill the distresse) Shall be a wrong doer *ab initio*.

12.E.48.

Otherwise it is, if hee misdemean an authoritie that another giueth him. As if I lend my horse to one to ride to Yorke, & he ride further, yet the riding to Yorke shall not be vnlawfull. Nor a generall action of trespassse lieth not against him vpon an accord vpon the case.

Especially for things that cannot bee imputed to his owne follie.

The Lord Chancellors seruant impleaded at the cōmon law, claimeth priuiledge of the Chancerie: and before it be discussed whether

35.H.6.3.

whether he shall haue it or no, the Lord Chancellor dieth; yet his priuiledge is allowable still, for the act of the Court to aduise of it, shall not preiudice him.

33. H. 8. Br.

Of rent a man shall haue an eiection of ward before seisin: for the law counteth him in seisin, in as much as he cannot haue it before the day. Otherwise it is of land.

And therefore

64. Diueth not a man to shew that which by intempement he knoweth not.

2. May. 138.

A man may plead that he was chosen Knight for the Shire by the greatest number, without shewing the number: for the election may be by voices, or hands, or in other sort; hard to discerne the certaine number, and yet easie to see who had the greater numbers.

10. E. 4. 15.

One bound in an obligation to serue I. S. for vij. yeares *in omnibus mandatis eius licitis*, shall plead that he did serue him lawfully, without shewing what seruice or in what commandment: for no seruant can remember all.

4. E. 6. 46.

A man may auer a thing to be don by couine, without shewing how the couin was: for couine is a secret thing contriued betweene two or three, to the preiudice of another.

Truth.

Truth.

And therefore

**65. It disfaunreth
Fraud and coine.**

If a woman that hath good title of Dower, cause I. S. to disseise the tenant of the land, and recouereth her dower against I. S. yet this is no good estate of dower in her, for she is priuie to an vnlawfull act, which should be the meanes of her estate. 18.H.8.5.

66. Uncertaine, whereby truth is innuenced.

A man grants all his trees and wood vpon Bacre, that may reasonably be spared; this is a void grant, vnlesse it be referred to a third persons iudgement, what may bee spared. 1.Mar.Dy.91.

If two seuerall Writs of one selfe same thing against one selfe same man, be returned at one selfe same time: both shal abate. Manxels case fol. 10.b.

67. Variance.

If the Writ varie from the Obligation, or other specialty in name, surname, or such like, in an action of debt or annuitie brought vpon it, or the Court varie from the Writ. As in an action of debt of xx. l. and declare but a debt of x. l. both shall abate. 11.E.4.2.
8.E.4.3.b.

E

An

(a) 4. ass. pl. 2.
 (b) 3. H. 6. 3.
 (c) 7. H. 6. 22.

An (a) esloynne or (b) protection varying from the originall Writ in the quantite of the Tenancie, or the name of the partie, shall be quashed: and the Chancellors seru-
 uant bringing a Writ of priuiledge varying from the originall Writ (as if the original be a Writ of Trespasse, and the priuiledge in *placito debiti*, or the originall an Action of Debt of 44. l. and the Writ of priuiledge in *placito debiti* of 42. l.) it shall bee disallowed.

Departure also when one fortifyeth not the matter of his plea that went before, but cometh in with a new matter, is a kinde of variance, & maketh the plea naught. As if thereioinder be a matter puisne vnderneath the matter of his barre, and not aboue, and going before it: As in an action of Trespasse, the defendant pleadeth a discent vnto him of the land, the plaintife saith, that after the discent the defendant infeoffed him: Now if the defendant reioyne, that the feoffment was vpon condition, and he entred for the condition broken; this is a departure: for the matter of the barre (that is, the discent) is before the matter of the reioynder, that is to say, the entrie for the condition broken, whereby the feoffment is auoyded. So if in an assise the defendant pleadeth the feoffment of I. S. & the plaintife make title to himselfe by discent, and that he was disseised by I. S. who infeoffed the defendant: or that he infeoffed I. S. vpon condition, who brake the condition, &

after

afterwards infeofsed the defendant &c. Now if the defendant say, that after the disseisin (or condition broken) and after the feoffement of I.S. to the defendant, the plaintife did release to the defendant, or confirme the state of the defendant, this is a departure, for that is a matter that groweth after the feoffement pleaded in barre. But if he plead such a release or confirmation from the plaintife to I.S. that is no departure; for it is a matter before the feoffement, or in an action of Trespas for goods, if the defendant intitule himselfe by the gift of I.S. and the plaintife saith that himselfe was possessed till I.S. tooke them from him and gaue them to the defendant. Now the defendant may say, that after the taking, the plaintife gaue them to I. S. who gaue them to the defendant: For although the defendant might haue pleaded these things at the beginning, yet, in asmuch as it is pursuing, and fortifieth his barre, and no puisne matter vnderneath the title of his barre, but eigne, and aboue the matter of his barre, therefore it is no departure. So a plea in a barre which is intendible at the Common Law cannot be maintained by a matter of custome or by Statute law. As in an assise the Tenant pleadeth in barre a deuise vnto himselfe of the land, being deuifable by the custome: the plaintife saith, that the Deuifor was within age at the time of the deuisee. Now if the Tenant say, That by the Custome there, an

infant of fifteene yeares of age may make a deuife; this is a departure. For the custome pleaded in barre shall be intended of those that may make a deuife by the Common law. So if in an action of Trespasse the defendant plead in barre a lease for fiftie yeares from a house of Religion, & the plaintife auoyde it, by reason it was made within a year before the dissolution, and so void by the Statute 31 H.8. Now if the defendant will alleadge, That by the same Statute it is prouided, that all such Leases shall be good for xxj. yeares, and so maintaine the Lease to bee good for so many yeares, this is a departure. Or if one plead a Fine, and that being auoided because the parties to the fine had nothing, will maintaine the Fine to be good by the Statute 1 R. 3. because hee that leuied the Fine, was *estli quise*.

68. Contrarietie.

21.E.4 36.

An Obligation is made *soluendum namquam*. This *Soluendum* is void, and the thing presently due.

4.E.4 39.

A. is bound to B. *soluendum eidem*. This is a good Obligation, and the *Soluendum* void: for the plaintife may declare upon a *Soluendum* to himselfe.

31.H.7.21.b.

In a Trespasse *de domo fracta & inuiri eadem domus fractis*. The defendant cannot pleade not guiltie to the breaking of the house, & iustifie the breaking of the wall.

for the house and walls are all one, and hee cannot of the same thing both iustifie and plead not guiltie: for by the iustification, he acknowledgeth himselfe guiltie. So one is contrarie to another.

A feoffment in fee is made of two acres, vnto two men *habendum* one acre to one man, and the other acre to the other man. This is a void *habendum*: for the premisses giue him an interest through both acres, & the *habendum* excludeth him from hauing any thing to doe in one.

2. & 3. P. & M.
153.

A lease of a mannor excepting the seruices, the exception is void: for it is parcell of the thing let.

And therefore

69. It will not dzine a man to iustifie that he goeth about to defeat.

Hethat bringeth an assise of the mastership of a Chappell against I. S. shall not need to name I. S. the master of the Chappell, because the plaintife is to disproue his interest.

10. H. 7. 2

Dilligence

And therefore

70. It hateth Follie, and Negligence.

After a recouerie in a writ of right, if a stranger that hath right, lay not to his claime within a yeare and a day, he is barred

5. 8. 3. 22. Hen. 6.

for euer. For *vigilantibus & non dormientibus inra subueniunt.*

List. 93.

A discent cast during the couerture (where the wife is disseised) barreth her not of her entrie after the husbands death. But if a feme sole be disseised, and then taketh a husband, there a discent during the couerture taketh away her entrie: for it was her follie to take such a husband that entered not in time.

Speeding of mens Causes.

And therefore

71. It hateth Delays.

3. H. 6. 15. 6.

He that pleadeth a Record in delay, (as to proue the plaintiff excommunicate) must haue it readie to shew. Otherwise it is, if he plead it in barre.

13. H. 7. 3.

In dilatorie pleas both defendants must ioyne.

8. H. 7. 9.

A plea in barre that is dilatorie, must be good to euerie common entent.

72. Unnecessarie circumstances.

3. H. 6. 1. 6.

One that is in Court readie to ioyne with the defendant, may doe it without Proceſſe. As the vouchee the plaintifes lessor beeing praied in aid of, when the def. in a repleuin auoweth vpon him, or the mesne when the Lord paramount auoweth vpon him. But ioynder in aid cannot be by Attorney without Proceſſe.

One that is a debtor to the King of Record in the Exchequer, if he be seene in the Court, may be brought in to answer without Proceffe. *1.H.6.4.b.*

73. Circuit of Action.

When a father infeofeth his sonne and heire with warrantie, and dieth. Now the son in a *præcipe* brought against him, may vouch the feoffor of his father: for the Law will not suffer to vouch himselfe, & when he commeth in as vouchee, then to deraign the first Warrantie for the Circuit of voucher.

Manxels case. fol. 7.b.

Vpon the grant of a Ward with warrantie, the defendant in a Writ of Right of Ward, may rebutt the plaintiff by that warrantie, and shall not be driuen to bring an Action of Couenant for auoyding circuit of action.

So in an action of wast vpon a Lease for yeares by deede. And in the same deed the lessor granteth to the lessee, that hee shall not be impeached of wast; the lessee may plead this in an action of wast.

**The Law construeth things
with equitie and moderation.**

And therefore

**74. Restraineth a generall act, if there be
any m. schiese or inconuenience in it.**

Tenant for life lets to another for life, *Litt. 110.*
E 4 without

without expressing whose liues, it shall bee taken for the lessors owne life; for else it were a forfeiture of his estate.

A house that hath Copyholds and other lands vsually occupied with it, is let for yeares, with the lands appertaining; yet the Copyholds passe not without speciall naming: for then it were a forfeiture of them.

A Corodie granted to one and his seruant to sitte at his Messe, he cannot bring a seruant that hath some filthie or noisome disease.

Estouers granted oue of a Mannour, the grantee shall not cut downe fruit trees.

A Common graunted to one for all his beasts, yet he shall not haue Common for Goates, nor Geese, nor other beasts, not Commonable.

A scoffment of all his lands in the town of D. with Common in *omnibus terris suis*, this Common shal be intended in D. only, and not elsewhere.

75 Moderateth the Strictnesse of the Law it selfe.

By Abridging, diminishing, and taking away the seueritie of it, and mollifying the hardnesse thereof. A moral vertue as *Plowden* calleth, and may appeare by *Aristotle*, who treating of it defineth it, *A certaine correction of the Law, wherein it is any way Wanting, because of the generatitie of it.*

It is no trespasse for a man to beate his Apprentice, which is reasonable correction.

No more is it to carrie away a mans wife against his will, to a lawfull end. As to sue a diuorce against her husband, or to haue the peace of him before a Iustice of peace.

A great part of the depth and learning of the Law (if you goe to the primatiue reason of it) standeth vpon this and that other kind of equitie that went before. Of both which *Plowden* in that case discourseth at large, and well setteth forth the nature of them, so farre as concerneth the interpretations of Statutes. But they haue a further & more shining vse in the exposition of Common Law it selfe, as in the cases before put.

To the best.

And therefore

76. Euerie act to be lawfull when it standeth indifferent to be lawfull or not.

If the Lessor come vpon the ground, it shall be intended that he came to see if wast were done,

If the disseissee come, it shalbe taken that he meant to be remitted

In an action of Trespasse, two issues are ioyned triable in two counties, one in London, an other in Middlesex only (without saying which of the issues it should trie;) this shall be taken to trie the issue in Mid. onely: for so the *venire facias* is lawfull, &
not

11 H. 7. 5.

not in both counties; which is against law.
And therefore it is a discontinuance of the
issue in London, & not a miscontinuance.

CHAP. 4.

Of Law Constructions that are naturall.

THUS farre of Rules drawn
from other sciences. There follow
those that are proper to our selves:
which we call Law-constructions.
And are naturall or sained.

Of the first sort wee haue two notable
grounds.

Law construeth things,
Reasonably.

And therefore

77. With a reasonable intent.

A feoffment by deed of a Mannor, with
auowson appendant, and no liuerie made,
the auowson passeth not: yet they may
passe without liuery, but the meaning was,
the mannor and it should passe together.

A bargaine and sale of land, and a reuer-
sion by deede not inrolled, the reuersion
passeth not no more than the land, though
the deed without inrolment may passe the
reuerfion:

reuerſion: but it was meant they ſhould paſſe together.

One reciting by his deed, that where by preſcription he hath uſed to finde a Chaplein, becauſe ſome controuerſie hath grown of it, graunteth by the ſame deed to doe it: this determineth not the preſcription, for the intent of the deed (reciting the preſcription) was to confirme it, and not to make a new grant. 21. H. 7. 5.

78. According to the effect,

A deed deliuered by an infant, cannot be deliuered again at his full age: for it tooke ſome effect before, and was but voydable. 1 H. 6. 4.

But a deede deliuered by a feme Couert, or a releaſe deliuered to one that hath nothing in the land, may bee deliuered againe (*viz.*) when ſhee commeth to be ſole, or the partie to haue ſomewhat in the Land: for the firſt deliuey was meereley void, & took no effect at all.

So that

79. Hee that cannot haue the effect of a thing, ſhall not haue the thing it ſelfe.

The King ſhall not be receiued vpon default of Tenāt for life, becauſe the demand cannot haue the effect of the receipt. *viz.* to count againſt him: which none can doe againſt the King, but ſue to him by petition. 4 Ed. 2. 241.

Two Abbots cannot bee Ioyntenants: Liz.
for

for they cannot haue the effect of it, which is suruiuorship.

30. To the most validitie.

Lut. 140.b.

Tenant in taile makes a lease for life, this shall be intended the Lessees life.

An annuitie granted *pro consilio impendendo*, or a feoffment *ad erudiendum filium*, or *ad soluendum* x.s. is a condition, without words conditionall, because else the partie hath no remedie.

And therefore

31. When many toyne in an act, it maketh it his act that may doe it.

2. & 3. El. Dy. 131.

A vse limited to begin when ones eldest sonne is married by I.S. the sonne (being in ward to the King) is married by the king and I.S. yet no vse riseth, for it is the sole marriage of the King.

A patron of a Church suffereth an vsurpation by fixe monethes, and then grants an annuitie to I.S. till he doe promote him to a benefice After, he & the vsurper ioin in a presentment of I.S. yet the annuity is not determined.

Lissiles,

The disseisee and the heire of the disseisor, in by discent make a feoffment by one deede, and Liuerie; this is the feoffment of the heire onely, and confirmation of the disseisee.

32. When

32. When two titles concurre, the best is preferred.

One is disseised, and the disseisor lets the land to the disseisee for terme of yeares, or at will: now if he enter, the Law shall say, he is in of his ancient and best title. *L. 11.*

33. Things to bee done by him that hath most skill to doe them.

An Obligation vpon condition, that a Bell shall be brought by the Obligee, to the Obligors house (being a Brasier) and there weighed and put in fire: and then the Obligor to make a Tennor of it, tunable with other bells. *4. E. 4. 4.*

The Obligor must weigh it, & put it in fire (not being expressed who shall do it) for it belongs to his office, & therefore he hath most skill to doe it.

So vpon condition that the Obligee shall bring to the Obligors shop (being a tailor) three yards of cloth which shall be shapen, and the Obligor to make the Obligee a gowne of it: the Obligor must shape it.

A marchant agreeth with the Kings collectors, that his marchandise shall be weighed at the Kings beame, and the King shall haue his subsidie as it riseth: the Collector must weighe it. *4. E. 6. 15.*

Issues ioined must be tried by them that haue most skill. (*videlicet.*) An issue vpon the *4. E. 3. 306.*

the law, by the Iustices learned in the law.
Attendance vpon the King (Scotland) in
warre xl. dayes (as tenant by escuage must)
by certificate of the kings Marshall.

L. 21.

11. E. 4. 3. 6.

Disseisin of an office in the Common
place, or raising of a Record there, by the Fi-
lizers and Attournies, attendant in that
Court.

84. Hold things good to some purpose.

1. & 2. T. & M.
107.

Lessee for twentie yeares takes a Lease
for x. yeares (to begin presently) vpon con-
dition if such a thing be not done, to bee
void, though the second lease bee void vpon
the condition broken, yet the surrender
remaineth good.

10. H. 7. 33.

A feoffment vpon condition to be void,
as if it had neuer beene, yet the feoffee shall
haue an action of trespass (after the feoffors
entry for the condition broken) for a trespass
done by the Feoffor before.

85. One thing to enture as another.

21. H. 7. 13.

The King grants to a Towne *easdem li-
bertates quas London habet*, it shall be enter-
ded the like. The Lessor enfeoffeth his Les-
see for life, by *dedi & concessi*, this shall en-
ture as a confirmation.

15. H. 7. 7.

One grants the third presentment to an
aduouson, and dieth: his heire shall pre-
sent twice, and his wife shall haue the third
for her dower, and so the grantee shall
haue

haue but the fourth.

The King pardoneth one the making of a Bridge; this is onely good for the fine: but yet hee must make the Bridge, because the Kings subiects haue interest in it.

37. H. 6. 4.

36. In one thing, all things pursuant to be included.

One makes a lease, excepting a close, wood, &c. now the Law giueth him a way to come to it.

14. H. 3. 1.

Where the King is to haue mines, the Law giueth him power to dig in the Land.

10. E. 3. 17.

Vpon a grant of Trees, the Grantee may come vpon the Land to cut them downe, & with his Cariage to carry them through the land. And the vendee of all ones fishes in his pond, may iustifie the coming vpon the bankes to fish, but not the digging of a trench to let out the water to take the fish, for he may rake them by nets, and other deuises. But if there were no other meanes to take them, hee might digge a trench.

2. R. 2. Barr. 337.

37. Strongest against him that doth them.

Two Tenants in common grant a rent of twenty shillings, the grantee shall haue forty shillings. But if they reserue twenty shillings vpon a lease, they shall haue onely one twenty shillings.

2. & 3. T. & M.
140. b. & 161. b.

One

the law, by the Iustices learned in the law.
Attendance vpon the King (Scotland) in
warre xl. dayes (as tenant by escuage must)
by certificate of the kings Marshall.

L. 21.

11. E. 4. 3. 6.

Disseisin of an office in the Common-
place, or raising of a Record there, by the Fi-
lizers and Attournies, attendant in that
Court.

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the condition broken, yet the surrender
remaineth good.

10. H. 7. 22.

A feoffment vpon condition to be void,
as if it had neuer beene, yet the feoffee shall
haue an action of trespass (after the feoffors
entry for the condition broken) for a trespass
done by the Feoffor before.

85. One thing to enture as another.

31. H. 7. 13.

The King grants to a Towne *easdem li-
bertates quas London habet*, it shall be enter-
ded the like. The Lessor entfeoffeth his Les-
see for life, by *dedi & concessi*, this shall en-
ture as a confirmation.

15. H. 7. 7.

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aduouson, and dieth: his heire shall pre-
sent twice, and his wife shall haue the third
for her dower, and so the grantee shall
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haue but the fourth.

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2. & 3. T. & M.
140. b. & 161. b.

One

2. M. 104.

One bound to pay l. s. twenty pound, *cetera festum natalis domini*, it is no plea to say he hath paid it, but he must shew when, else it shall bee taken hee paid it after the feast.

And therefore

88. A man shall not qualifie his owne act.

21 H. 7. 23. b.

The obligee releaseth his debt till Michaelmasse, the debt is gone for euer.

18. E. 3. Var. 53.

A reuersion of three acres of land is granted, the tenant atturnes for one, it is a good atturnment for all.

17. E. 1. Dy. 339.

A parson makes a lease for xl. yeares, the patron and Ordinarie confirme it for xx. This is a good confirmation for the whole xl. yeares.

The construction which otherwise law would make, is altered by the parties.

89. Speciall agreement.

40. E. 3. 5.

Lessee for yeares is excused for wast, if the houses bee blowne downe by sudden storme or tempest. But in that case if he couenant to keepe reparations, an action of Couenant lieth against him.

Park 55. f. 6
563.

Two Ioyntenants exchange an acre of land with another, they should hold the land taken in exchange ioyntly. But if they exchange to haue that acre in common between them, they shall be Tenants in common.

90. Speciall words.

A lease reseruing a rent, the heire of the lessor, after his death, shall haue the rent: otherwise, if the lease be reseruing to the lessor. 27.H.8.19.

A feoffement in fee to one and his heires with warrantie to the feoffee. This warrantie goeth not to the heire. 35.H.8.Dy.425.

91. Surplusage of words.

The Ordinarie may refuse him generally, that demands his clergie without shewing cause. But if he shew cause which our law alloweth not (as because hee hath not his *tonsure* or *ornamentum Clericale &c.*) he shall pay a fine, and yet be driuen to take the Felon. 9.E.4.28.b.Lit.

In a *valore maritagij*, & count of a tender of mariage to the def. The tender is traucersable, if it were not before. 9.El.Dy.255b.

An information vpon a statute made such a day, & the day mistaken, is naught, though he needed not to haue recited the day. 6.E.6.84.

In an action of Debt by I. S. Parson of D. no such towne as D. is a good plea: yet he needed not to haue named himself parson of D.

A writ of forging *diuersa facta & munita* and count but of one, the Writ shall abate: yet he needed not to haue said in his Writ, but onely *factum*.

C H A P. 5.

Of Fictions in Law.

A fained construction, which we call a fiction in law, is when in a similitudinarie sort, the law constructeth a thing otherwise than it is in truth. And is of the person, thing, Action, and the circumstances there of time and place.

Of the Person.

92. Things don by another, are as if they were done by ones selfe.

27. H. 8. 24.

A promise to ones wife in consideration of a thing to be performed by the husband; if the husband vpon his comming home, agree and performe the consideration; he may plead this promise to be made to him selfe.

If my seruant sel my goods, and I agree, I shall haue an Action of Debt, supposing he bought of me.

25. El. Earle of
Leis. 6.

A lease for yeares is made, and a letter of Attornie to deliuer possession to the lessee; if the Attorney deliuer possession to the Attornie of the Lessee: it is a good possession and pursuing to his authoritie.

Of the thing wee haue these two rules.

93. A thing that commeth in lieu of another, to be as if it were the same.

One shall recouer in value against the heire (vpon the ancestors warrantie) lands which the heire took in exchange for lands descended.

18.H.3.rit.vi.26.

A mannor is giuen by fine, a *Scire facias* lieth of a Tenancie that afterwards escheated.

48.E.3.11.

If a mannor discend to an heire within age, and after a tenancie escheateth, he shall haue his age of it in a *Precipe* of the manor; it shall bee asslets by discent, and hee may vouch of this Tenancie by reason of a warrantie made of the mannor; for the tenancie commeth in lieu of the seruices.

6.H.4.1.

94. A thing to be all one with that whereunto it doth amount.

The maxime of a bastarde eigne, is that the *mulier puisne* must make an entrie vpon him, or else he gaineth the right: yet a continuall claime made by the *mulier puisne* destroyeth his right: for it amounteth to an entrie.

14.H.4.9.

A Lease for a thousand dayes, is a Lease for yeares.

14.H.8.13.

A lease for yeares and a release amounteth to a feoffement.

Brook.

If a man licence one to occupie his land for

5.H.7.1.

for a yeare. This is a lease for a yeare.

And therefore

95. A thing that should not be done, to bee
as if it were not done.

18. El. Dy. 362.

One grants a rent charge, without saying
pro se & heredibus, and dieth. The grantee
brings a writ of Annuities against the heire,
and hath iudgment to recouer: yet he may
distrein afterwards: for the heire was neuer
chargeable. So that vpon the matter, it
makes no election.

20. El. Dy. 362.

A man makes a lease for yeres of a house,
with certaine implements, reseruing a rent,
the Executors after the Testators death, re-
ceiue the Rent, yet it is no assets in their
hands: for the whole rent belongeth to the
heire.

96. So of a thing done in a time that it
should not.

1. S. 6. Bract. 18.

A man seised in fee, lets for ten yeres, &
after selleth the land, and taketh it back to
him and his wife, & then the husband and
wife let it for twenty yeres, reseruing a rent:
the husband dieth, the wife accepts this
rent during the first ten yeares. By this the
second lease is not affirmed, for the accep-
tance of a rent before the lease beginneth,
and so before any rent bedue, is no accep-
tance at all.

21. El. 363.

A matter pleaded or disclosed out of time
and course, is as if it were not pleaded at
all.

all. As if one bring an action of debt vpon an obligation, & count that the defendant was of full age at the time, the defendant shall not trauers this; but onely say he was within age, and the trauerse must come of the plaintifes part.

To the circumstance of time, these two rules pertain.

Distinction of time is imagined in things.
97. Done together.

One deuifeth a terme for yeres to his son, and that the wife shall haue it during the sonnes minoritie. This is first a deuise to his wife, and after to the sonne when he cometh of full age. 31. El. 540.

One grants his reuersion of lands, & by the same deed granteth a rent out of these lands to another, and deliuereth the deede to both at one selfe same time. Yet it shall inure first as a grant of the rent to the one, and then as a grant of the reuersion to the other.

98. Happening in an instant.

A mesuallie discends to the Tenant of the land, though the mesuallie be at the same instant extinct, yet the tenant shall pay reliefe if he be of full age, or be in ward if he be within age (*viz.*) where it is holden by knights seruice. 11. H. 7. 12.

Land is given to A. for the life of B. the 7. H. 4. 6.

F 3

remain-

remainder to the right heires of B. A. dieth, the remainder takes effect before any occupant.

9.E.4.31.

A man exchangeth land for a rent charge out of the same land. This is good enough though they be in an instant (whereby the rent should be drowned in the land) for the law accounteth the exchange of the land to be first perfected.

99. Things relating to a time long before, be as if they were done immediatly from that time.

Lit. 93.

When the wife is indowed by the heire of her husbands lands, she shall be saide to be in immediatly from the husband. And therefore if the husband were a disseisor, & the heire in by discent, yet the disseisee may enter vpon the wife.

36.H.6.7.

Goods taken out of the possession of an executor who refuseth, and administration is committed to I. S. I. S. may haue an action of Trespasse, supposing they were taken out of his possession: for he shall be said an Administrator from the verie time of the death of the intestate.

These rules of common reason do many times crosse & encounter one another, which is the greatest difficulty that we find in the arguing of our cases. But to helpe this, the generall ground is according to the former rule () that

100. Those

100. Those p^{re}uaille that carrie the more excellent and perfect reason with them.

Tenant for life makes a lease for life without naming whose life, this shall be intended for his owne life (Rule 74.) for else it were a wrong But if tenant in taile make such a lease for life, this is a discontinuance, and for life of the grantee (Rule 86.) for it for it is strongest against the grantor, and most beneficiall for the grantee.

Lit. 110. b.

Lit. 140. b.

Things executed where the husband is seised in the right of his wife, shall not be auoided by diuorce: as wast committed, receit of rent, wards, or presentments that haue fallen gifts made of the wiues goods, &c. Rule 39. But otherwise it is in matters of inheritance, as if the husband discontue and charge the wiues lands, release or manumise villeines &c. Rule 30.

32. H. 8. Br. dec. 18.

A feoffement is made with warrantie, the feoffee dieth hauing issue two daughters, who make partition of the land. This warrantie shal be diuided notwithstanding the partition which is their owne act, and therefore not so much fauoured Rule 46. For the land commeth to them originally by act in law, that is by discent, Rule 5.

*28. S. 3. 20 b.
Br. gar. 27.*

If the Chancellor die before his seruants priuiledge discussed in banke, yet it shal be allowed, notwithstanding the cause of his priuiledge now be gon. (contrarie to Rule 3.) But the reason is, for that once he had cause: and the act of a third person (that is to say the Court) shall not preiudice him

35. H. 6. 3.

9. *Sl. Dy.* 264. b.

where no follie was in himselfe. Rule 63.

The husband possessed of a terme in the right of his wife, maketh a lease of parcell, rendering a Rent, the wife shall haue the residue of the terme, but not the rent, Rule 9. notwithstanding it come in lieu of the land, Rule 93. and be as it were an accessarie vnto it, Rule 25.

Things may be done in the night time, notwithstanding, rule 49. where there is a kind of necessitie of doing them, then, Rule 44. as arbitrement made and deliuered in writing, the last day after the Sunne set, is good enough: for iudgements and arbitrements require long aduice.

11. *H. 7.* 5.

So may goods be distreyned in the night time for damage feasant.

Pank. 41.

If one of the Chapter infeoffe Deane & Chapter, by that he himselfe shall take by his owne liuerie, Rule 18. notwithstanding Rule 20.

13. *H. 2.* 15.

A man may doe an act to himselfe, notwithstanding Rule 20. where the law cannot doe otherwise, Rule 18. as a fem tenant in socage may indow her selfe, an executor pay himselfe, &c. Counts and declarations must be certain, Rule 66. yet things which containe a necessarie implication are good enough, Rule 94. As in an *eiectione firme*, & count of a lease made by tenant for life, it sufficeth to say, that the lessor is yet seised, without alledging his life expressly. In an information vpon the Statute of vsurie, and count that the defendant tooke *per viam, & medium*

14. *El. Dy.* 347.

medium corrupte mutationis, where it should be *accomodationis*, yet it is good enough.

Corporall seruice as suite of Court &c. 7.H.4.9. cannot be done by another, Rule 14. notwithstanding Rule 92.

Matters of trust or authoritie, &c. cannot be granted ouer: because being strictly taken, they are esteemed to belong to the person, and therefore guided by Rule 15. Yet an office of skill and diligence to one and his heires, may be granted ouer. So vpon a letter of Attorny to deliuer seisin to A. he may deliuer it to the Attornie of A. for that vpon the matter is a possession deliuered to himselfe, Rule 21. 12.El. 379b.

Tenant in taile makes a feoffement with warrantie, and leaueth to discend a reuersion in fee simple expectant vpon an estate taile, which I.S. hath; this is no asssets, for it may be tolled by a common recouerie (& therefore the law esteemeth it as if it were so) But it seemeth otherwise of a reuersion depending vpon an estate taile of land which the issue himselfe hath, for it were the follie of the issue in taile to cut it off, Rule 70. 25.El. Earle of Leic. case.

CHAP. 6.

Of Lawes Positiue.

And so much of Lawes Natīue.

A The Law of nature and of reason, or the Law of reason primarie and secundarie, with the rules framed and collected thereupon. Which three are as the Sunne and the Moone and the seuen Starres, to giue light to al the possitiue laws of the world.

Positiue are lawes framed by their light, & from thence come the grounds & maximes of all Common Law: for that which we call common law, is not a word new & strange, or barbarous, and proper to our selues, and the law that that we professe, as some vnlearnedly would haue it, but the right terme for all other lawes. So *Euripides* mencioneth

the Common Lawes of Greece: and *Plato* doth define it, speaking of the reasoning facultie, saith he

which being taken vp by the common consent of a Countrey, is called Law. And anon he nameth it

the golden and sacred rule of reason, which
we

we call Common Law. The place is verie notable: it openeth the originall and first beginning of the Common law, it sheweth the antiquitie of the name, in effect all one with that which since and by a later name is called *Ius Civile* (*quod quisque populus ipse sibi constituit*, as *Iustinian* speaketh) it teacheth Common Law to be nothing els but common reason: but what reason? not that which euerie one doth frame vnto himselfe: but refined reason. *Que cum adoleuit atque perfecta est nominatur ius sapientia* as *Tully* saith, and as *Plato* there hath it, when it commeth to be *opinio* or *decretum*. How?

generally receiued by the consent of all.

Therefore *Laws positine*, which are directly contrarie to the former, loose their force, and are no laws at all.

As those which are contrarie to the Law of nature. Such was that of the Egyptians, to turne women to marchandise, and common-wealth affaires, & men to keep within dores. And of the Thracians, which accounted idlenesse an honest thing, and stealing verie commendable. So if it were made a law, that men might commit adulterie, forge false deeds, &c. And this is manifest vnto all men. But because the law of reason is knowne onely to such as are able to iudge aright, and that but imperfectly (as before

before was shewed) therefore here the case is harder, what lawes may be said agreeable and what repugnant thereunto. Onely in general (which is sufficient for this place and purpose) it is truly said, & all men must agree, that lawes indeed repugnant to the law of reason, are aswell void, as those that crosse the law of nature.

Positive lawes are sundrie and diuers, according to the severall and diuers constitutions of particular places and Countries.

Such among the Iewes were their Politicalls, deliuered by Moses, which so farre as they bee positive, binde vs not vnto them. Such were the antient law of the Grecians, the xij tables, & ciuil lawes of the Romans, and **Such are the Common Lawes of England.** And almost so many people so many Lawes. And as those lawes are diuers one from another, so one and the self same lawes may be altered and changed in themselves. So long as no alteration is permitted against the two maine Lawes, of Nature, and Reason,

The



The second booke of LAVV.

CHAP. I.

*Of the Common Law of England,
whereof the parts of the Realme,
and of the persons in it. Of Cu-
stome, and Prerogatiue.*



THE Common law of Eng-
land is a Law bled time
out of mind, or by prescripti-
on throughout the Realme.

For to plead that there is a
custome among merchants throughout the
Realm, to assigne licences ouer, is not good,
in as much as that which is currāt through-
out the Realme, is Common Law, not Cu-
stome. And vnder the name of the Realme
of England, it is plaine that (a) Scotland
and

*Lit. 38. That pre-
scription is a usage
time out of mind.*

*(a) 8 R. 2. cont.
claim. 13.*

(b) 2. Mar. 39.
 (c) 20. H. 6. 8. A
 fine with proclamations according to
 4 H. 7. shall not
 barre one in Ire-
 land.
 (d) 22. ass. pl. 93.
 The statute 1. R. 2.
 cap. 5. proueth the
 Common Law to
 be so.
 (e) Sir Henry Con-
 stables Co. 107.

and Wales (b) much lesse (c) Ireland, are not included. Neither is the maine sea, that is to say, beneath the low water mark, parcell of the Realme: for there the Admiralls iurisdiction (which hath nothing to doe of things within the Realme) doth only meddle and not the Common Law. But betwene the high water marke and the low water marke, where by ordinarie and naturall course the sea ebbes & flowes: the common Law & the Admiraltie haue *diuisum imperium*, one vpon the water when it is full Sea, the other vpon the land when it is an ebbe.

Statutes 27. H. 8. cap. 26. Incorporateth Wales into England.

(a) 12 H. 7. 18.
 Fin. 10. x.
 (b) Litt. consuetu-
 do ex rationabili
 causa vfitata pri-
 uat Communium
 legem.
 (c) Li. 46. & 58.
 (d) 8. H. 3. prescip.
 60.

The whole Realme is diuided into seuerall Countiees or shires, And those again into certaine villes or Townes: in many of which as also in diuers mannors wherof it commeth to speake afterwards.

There be speciall vsuages time out of mind altering the common law which we call Customes.

As in Kent, the custom of Gauekind for all the heires males to inherit alike, and the wife not to lose her dower, nor the heire his Land, though the husband or ancestor be hanged for felonie.

In London, if the debtor be fugitiue, that the creditor before the day of paiement may arrest him to find better suertie. In many Borowghes the youngest sonne to inherite all.

5. E. 4. 30.

Lit. 37.

all. The wife to haue for her dower al her husbands lands: the lands there to be deuifible by will.

A Countie is a part of the Realme, entirely gouerned by one **Sheriffe** vnder the King, but all subiect to the generall gouernment of the Realme. And therefore euery Countie is as it were, an entire body of it selfe, so that vpon a feoffement of lands in many townes in one Countie, liuerie of seisin made in one parcell, in any one of the Townes in the name of all, sufficeth for all the lands in all the other Townes within the same Countie. But vpon a feoffement of lands in diuers Counties, there must be liuery of seisin in euery Countie.

Also an exchange of lands in one and the same Countie is good by parroll: but in diuers it must bee by deede indented. *Lit. 13.*

A man is driuen to take notice of manie things done in the same County, where he is, but not in another. As if an action of debt be brought against an Executor, he may pay the asssets which hee hath in his hands to anie other to whom the Testator stood indebted, till notice of the action brought against him, if the suit be in an other Countie, but not if it bee in the same Countie, for there hee must take notice of the action at his perill. *2. H. 4. 11.*

An Enquest also shall not take notice of things done in another Countie; but because all are vnder one generall gouernment,

21.H.6.51.

9.E.4.40.

ment, therefore things done in severall shires shall be tried by a ioynder of Counties, the Iury that tryeth the principall may take notice of a thing accessory, though it bee in another Shire. As in an action of trespassse, if the defendant plead an arbitrement in a forraine County, and issue bee taken vpon it, and found for the plantiffe: the Iury there must access damages for the trespassse done in the other Countie.

Likewise in an action of debt against an Executor, who pleadeth, *ne unque admittit*. and giueth in euidence, a deed of gift made vnto him by the Testator in his life time in another Countie, the Iurie must finde it vpon paine of attaint. So of a release pleaded to be made in another Countie in a writ of right.

There be in all thirtie nine Shires, Kent, Suffex, Surrey, &c.

18.H.6.13.

A Towne is a precinct, anciently containing ten families, whereupon in some Countries they are called Tythings, within one of which Tythings every man must bee dwelling, and finde suerties for his good behauiour, else he that taketh him into his house is to bee amerced in the Leet.

Diuers of these Townes haue Hamlets in them, some speciall places there bee in euery County, out of any Towne or Hamlet.

The persons within the Realme are to be considered either as one entire body, or

as particular persons.

As one entier Bodie, it consisteth of the King, and common persons his subjects.

The King is the head of the Common-wealth, immediate vnder God. 1. H. 7. 10.

And therefore carrying Gods stampe and marke among men, and being, as one may say, a God vpon earth, as God is a King in Heauen: both a shadow of the excellencies that are in God, in a similitudinarie sort giuen him: Gods excellencies and honor standeth partly in things incommunicable vnto other, partly in such as after a sort hee maketh his creatures partakers of both: which the King is said to haue some in truth, other by fiction, all by similitude from the diuine perfection.

The first thing in God, and most proper to his sacred Maiestie, is, the infinitenes of his nature; who, as the philosopher elegantly saith, onely is that Circle, *Cuius Centrum est ubique peripheria nusquam*. So say our bookes, that the king in a manner is euerie where, and present in all his Courts.

In a writ of Error vpon a false Iudgment giuen for the King, no *Scire facias* shall go forth *ad audiendum errores*, for the King is alwa es present in court, & that is the cause that the forme of entrie in all suites for the King is *Henricus Hobart miles, Attornatus domini Regis generalis qui pro domino Rege* F.N.B. 21. b.

25. H. 8. Br. non-
suite 68.
3. El. 237.

Rege sequit' ven' hic in Cur. &c. and doth not say *Dominus Rex per Henricum Hobart Attornatum suum, &c.* And therefore it is also, that the King cannot bee *non suite*, that all acts of Parliament which concerne the king or generall, and the Court must take notice without pleading of them, for he is in all, and all haue their part in him.

(a) 35. H. 6. 26.

(b) 3. Ed. 2. 13.

(c) 1. H. 7. 4.

A second thing proper vnto God, is the diuine perfection. In the King no imperfect thing can be thought, no (a) negligence, or laches, no follie, no infamie, no staine, or corruption of blood. So as (b) nonage auoideth not his grant, though it bee of Lands which he hath in his naturall capacitie.

By (c) his taking of the Imperiall crowne vpon him, all attainder of his person are purged *ipso facto*.

The excellencies which God bestoweth vpon his creatures (for I wil touch no more but those that the bookes of our Law doe speake of, and such as are leading rules to the cases that you shal find there argued & debated) are first, Maiestie, Soueraignitie, Power, Perpetuitie, & then that noble complement of Iustice, and truth.

Bract. lib. 1. cap. 8.

1. H. 7. grants 33.

The law saith *Bracton* giues vnto the King *Dominationem & potestatem*.

He hath absolute power ouer all: for by a clause of *non obstante* he may dispence with a Statute Law, and that (if he recite the statute) though the statute say, such dispensation shall be meerely void.

The King cannot take, hee cannot part from

from any thing but by matter of Record. And that is for the Maiestie of his person. His supream soueraignetic makes him immediate vnder God. *Omnis quidem sub eo & ipse sub nullo nisi tantum sub Deo*, saith Bract. It makes all lands to be holden of him, euerie surrender vnto him to be good; no action to lie against him; for who shall command the king.

Bract. *ibid.*

(a) *Stam pra* 736.

(b) 7 E 4 17.

(c) 50 *Ass. pl. 1.*
18. E 12 498.

Nay, acts of Parliament do not bind him, vnlesse they concern the Commonwealth, or he be specially named. Neither can the King be a Iointenant with any, though it be of land, or other things that he hath in his bodie naturall: for none can bee equall with him. And therefore if two purchase land to them and their heires, and one bee made King, they are now no more Iointenants, but tenants in Common. Lastly for perpetuities, the King never dieth, but in law it is saide the demise of the King, and a gift vnto the King, without saying more, trencheth to his successors.

4 E. 4. 21.

1 El. 233 & 240

3. E 12. 239.

4 E. 1. 234.

4. Mar. 177.

*Potentia iniuria est
impotentia uoluntatis.*

To come to the other two, the power of God is alwaies ioined with Iustice & truth: for to doe wrong, to deale yntruly, is not omnipotencie, but a thing of weaknesse & impotencie. So it is with the King, he cannot be a (a) disseisor, he can be no wrongdoer: for he is all Iustice, he shall neuer be (b) estopped. Iudgement finall in a Writ of right, doth not conclude him, for hee is all truth, *Veritas & Iusticia* saith Bracton, *Circa solium eius*. They are the two supporters

(a) 4 E. 4 35.

(b) F. N. B. 143 b.

(c) 20 E 3. D. 15
F. N. B. 31. D.

ters that doe vphold his Crowne.

Therefore also hee hath a prerogative in all things that are not inturious to the subject. As hee may create Corporations, Deane and Chapter, Maior and Cominaltie, &c. make Denizens: and it remaineth good, though he be declared an vsurper after (but no continuance in England can make a Denizen, though it bee from his childhood, and he sworne to the King in Leets) he may referue rent vnto a stranger, grant a condition or thing in action, giue in fee simple, vpon condition not to alien, except out of his grant, things incident as Courts and perquisites of Courts vpon the grant of a mannor, sue in what court he will: as to haue a *Quare impedit* or Writ of Escheate, retornable in the Kings Bench, or a *Quare incumbravit* there, though the record of the Recouerie be in the common place. He may alledge in his Court or plea, double matter, or as many matters as he will (and the partie must answere to them all, and then the King shall take issue vpon any one at his pleasure. He may waue his issue, and demurre in Law, and contrariwise, so it be the same terme, but not in another terme, for so he might do it infinitely. He may challenge a iuror without shewing cause, or the array, because the Sherife that made it, was cofine to the partie. But no challenge shall be of a iuror against him. He is not bound to make a demand (or tender) where a lease is

is made, reseruing a rent with a clause of re-entrie: hath the ppertie of all goods that are in *nullius bonis*, shall haue the Tithes of Forrests and places out of any parish, take aduantage of other mens places, as to haue a Writ to the Bishop, if title appeare for him, though he be a stranger to the Action, all the daughters and heires (where the ancestor held in chiefe) must doe homage to him: where (if they hold of a common person) the eldest onely must do it where he is to haue a benefit, a man may plead more pleas than once, *per darreine continuance*, as outlawrie in an action of debt, &c. And many prerogatiues more he hath, which in their seuerall places shal come more properly to be considered.

But in them all it must bee remembred, That the Kings prerogatiue stretcheth not to the doing of any wrong: for it groweth wholly from the reason of of the Common Law, & is as it were a finger of that hand, although so much differing in fashion (as the head and the bodie can neuer be of one proportion) that if you set them in paralels together, you shall find it to be law almost in euerie case of the King, that is law in no case of a subiect. And yet for all that, they are not two but one law. Onely the Common Law is as the *primum mobile* which drawes all the Planets in their contrarie course.

In regard of the King, the Queene his wife is participant of diuers prerogatiues

aboue other women.

3.El.231.

(a) 49.aff.pl.8.

(b) 3.H.7.14.

As in an Act of Parliament making all gifts and grants vnto her, or by her (whether betweene the king & her, or betweene her and any other person) to be of the same effect, as if it were between other subiects, without any benefit thereby to come vnto the king, need not be pleaded, but the court and all the Realme must take knowledge of it, because shee is a publique person, in whom all the subiects of the Realme haue interest, being the Kings wife, as they haue in the King himselfe. Likewise shee may haue in her selfe the possession of personall things during her life, so as shee may (a) haue an Action in her owne name alone, take lands and other possessions from the king by Charter: (b) make leases, feofments &c. which shall bee good during her life, but afterward the king shal haue them. And diuers other prerogatiues shee hath, which follow in their place.

His Subiects are the members of the Common-wealth, and are Barons and Commoners.

Barons wee call the Peeres of the Realme. For euerie Duke and Earle is Peere of the Realme, because hee hath a Baronie belonging vnto him. Otherwise Duke and Earle are but names (a) of dignitie and of honour only, and (b) parcell of ones name.

So

(a) 14 H. 4. 7.

(b) 21. E. 4. 84.

3. H. 6. 10.

So as in euerie Action which he bringeth, or is brought against him, he must bee named Earle or Duke, as he is, else the writ shall abate. But the name of Baron is the name of ones place and calling, which shall not be expressed in any writ. And where addition is necessarie, as by the Statute of 1. H. 5. yet he shall neuer be impleaded by the name of baron, for it is not any dignitie, but must be named knight if he be one, or Esquier if hee bee no Knight. And touching Bishops, who inioy the name of Lords of the Parliament, they haue the same in respect of antient baronies annexed to their dignitie.

32 H 6, 29.

*Stamp prer. 154.
7. H. 8. Cr. 184.
Humes case by all
the Iustices of Eng-
land.*

All the rest are Commons.

The particular persons are natural persons, or bodie politique.

The naturall person is euerie man.

A bodie politique is a bodie in fiction of Law, that indureth in perpetuall succession. And such is the King alone, and by himselfe considered: and a Parson. The law calleth him the Rector of a Church, for the King hath two capacities, a bodie naturall (wherein he may inherite from any of his ancestors, or purchase to him and his heirs, and retaine the same, notwithstanding hee be remooued from his estate Royall) and a bodie politique, wherein he may purchase to him and his heires Kings of England, or

14. H. 3. 3. Finney.

4 El. 234.

4 E 3 17.
Br. Deane, &c. 2.
14 H. 3. 30.

to him and his successors. So a Parson is a Corporation by the Common Law, and hath two capacities, one to take to him and his heires, & the other to him and his successors. And therein he is seised *in iura Ecclesie*.

ibid.

And if I.S. be Parson of D. and land be giuen to I.S. Parson, and his successors, and to I.S. Clerke, and his heires; he is a tenant in Common with himselfe.

(a) F. N. B. 175.

The parson in regard of his continuall attendance vpon that sacred function, is freed from all personall charges that may hinder him in his calling. For such a one shall not be chosen Bailife, Bedle, Reeue, or other such Officer; nor bee compelled to come to the (b) Sherifes turne, to the (c) Leets of the King or other Lords, for land annexed to their Churches. And all this by the course of the Common Law.

(b) Marl cap. 10.
(c) F. N. B. 160. c.
(d) Marl cap. 10.
de iure forense it.

F. N. B. 175.
Br. Dym 16.

15 H. 7. 8.

So is euery other clark within orders. To the Parson belongeth of Common right (as our bookes say) the tenth of all manner of yearely increase, which we call Dismes, or Tithes. And therefore by a lease of *Rectoria*, the Lessee shall haue the dismes and offerings of the same Church; for they are incident vnto it.

32 H. 3. 7. d. 17.

And if a Parson demise his glebe to a Lay man, he shall pay Tithes, because they are of common right.

Euery

Everie Parson before he can be incumbent, must be presented to the **Ordinarie**, who is to admit him. And therefore is allowed time to inquire of the clerks habilitie. As if he be presented to the bishop when he is readie to ride, who willeth him to come to him within three dayes to be examined: if he come not then, nor within six moneths after, the Bishop may collate by laps: for there be many things to disshable him frō hauing the benefice. As if he be criminous, insufficient, a villeine, haue not his letters of Order, &c. And if a meere Layman be presented, admitted, and instituted, and no sentence of depriuation or nullitie giuen, the Ordinarie cannot collate by laps: for till that time, the church is full to all intents, when the Ordinarie admitteth him to be able, that is called an admission, when he admitteth him to the charge, as to say to the Clerke *Instituo te habere Curam animarū*, that is, institution.

14 H. 7. 21.

12. & 13. El. Din
292.

And then the Archdeacon is to put him in possession, by deliuering the ring of the church doze vnto him, and ringing of bells, which is called an induction, and that being done, the partie becommeth an incumbent. Before which induction there is no possession or free-hold in him, of glebe, or house, or dismes. So as a rent granted by a Prebendarie, after admission and institution, and before induction, with confirmation of the Ordinarie before induction, and
of

20. El. 528.

of Deane & Chapter, the day of induction is void.

The Incumbent hath not the meere right in him of Land in the right of his Church. But the fee simple is in abeyance, that is to say, onely in the remembrance, intendment, & consideration of law; **Therefore** he cannot discontinue, and **euerie Act which he doth with such land, may be annulled,** when he ceaseth to be incumbent, except such as are done by consent of patron and ordinarie, which bind for ever.

*Lit. 143.
6.E. 6. Dy. 69.*

*Lit. 143.
12. H. 8. 7.*

3. E. 4. 3.

*Doct. & Stud. par
Br. plen. 15.*

Doct. & St. ibid.

*40. E. 3. 28. Finc.
50. E. 3. 27.
Belnap.*

If the Church bee void sixe moneths, without presenting, which is called a laps, the Ordinarie himself may collate, that is, a Clerk appoint of his own: & if it be void sixe moneths after his time, then the Metropolitane, and sixe moneths after his time, the King may present. All this is to be vnderstood, **If the Patron present not before them.** But so long as the Church is void, though it be two yeares after, the patron may present, & the Ordinarie or Metropolitane are bound to admit him. *Quere* whether it be so where the King is intituled to present by laps.

When one Church is not able to finde the Cure, the ordinary by consent of the Patrons may unite it, or make a consolidation of it to some other. And it seemeth that in this case, the consent of the King
is

is not requisit, because here is no preiudice wrought to any, for if one man be patron of both Churches, hee shall haue the sole presentment: if there be seuerall Patrons, then they shall present by turne, and the King shall haue the laps, as before hee should. Otherwise it is vpon an appropriation, for that is an amortisement, and therefore all must ioyne in the making of it.

Statutes.

37. H. 8. Cap. 19. By assent of ordinary, incumbent, and Patron, vnder their seales, an vnion may bee made of two Churches, being not aboue six pound yearly value in the Kings bookes, nor distant one from another aboue a mile; sauing to the King his tenths, and first fruits.

In corporate Townes it must bee by assent of the Corporation.

If such a poore Parish shall within a yeare assure by writing to the incumbent and his successors, eight pound yearely, the vnion shall be void.

ouer and besides those Corporations that were at the Common law, there bee diuers others which haue growne of later time, by a speciall foundation and election, whereof some are aggregate of many persons, that is to say, of a head and body: others consist in one singular person.

14. H. 8. 3. Financ

These

14 H. 3. *ibid.*(a) 9. *Enq. D.*

255.

*Little. 36.*40. *Ass. pl. 27.*

& 41.

(a) *Little. 36.*(b) 40. *Ass. pl. 41.*(c) *Little. 38.*(d) 40. *Ass. pl. 27.*4 H. 4. *Cap. 2.*4 H. 4. *Cap. 12.*

(12.)

Little. 66.

These Corporations are all of them Tempozall or Spirituall.

The Tempozall, made by the King, as Mayor and Commynaltie; and many more which he maketh or may make euery day. Also (a) Colledges, as master & fellows, &c. diuers Townes are so incorporate before time of memozy, with power to hold plea, by Writ of *ex graui querela*, or such like, and are called **Boroughs**, from whence (a) come the Burgessees to the Parliament: and this maketh the difference betweene the Borough and a Towne. So that (b) upland Townes which are not ruled and gouerned as a Borough is, are but Townes, though they be inclosed in walls, as Ludlow, & such like. And euery (c) Borough is a Towne, but not *e conuerso*. (d) The names of all the townes in England, and which are so incorporate, and which not, are of record in the Exchequer.

The spirituall ones were for the most part made by the Pope, but had their power to purchase from the King. And these likewise are of two sorts, for either they are Regular or Secular.

Regular, which haue entred into Religion, (and thereupon called religious) professing to bow three things, Obedience, voluntary Poverty, and perpetuall Chastity. Wherefore these are dead persons in the account of Law. Onely their head hath power to purchase or doe such other things

things to the vse of the house. And of this sort are Abbot and Ceuent, Prior and Couent, &c.

Secular, are such as haue entred into Religion; as the Bishop and his Chapter, Master of an Hospitall, and his Brethren, or confreres, gardian of a chappell, & the chaplains, &c. Also Archdeacons, & such like. Touching the Bishop & his chapter (which make but one bodie) their possessions are diuided: so as the Bishop hath part by himselfe, & the Chapter the residue. Which chapter consisteth of a Deane, as the chiefe, & prebendaries, or such like, who are most properly termed the chapter: & of these also, their possessions for the most part are diuided: the Dean hauing some part sole in the right of his deanrie: the particular Prebendaries some other part in the right of their Prebends: the residue the Deane & Chapter haue together. And euerie of them is to such purpose incorporat by himselfe.

40. E. 3. 23.
Com 75.

17. E. 3. 40. Tarn.

21. E. 4.

17. Affl 29.
18. E. 3. 36.
F. N. B. 195.

And these spirituall corporations are sometimes presentatiue, sometimes datine, (perpetuall or remouenable) sometimes eleatine, & haue a common scale, according as their corporatiō is. To them also personages may be appropiate, by the patron, Ordinary, & king, & vicars, indowed to serue the cure. Wherupon a *præcipe qd reddat* lieth against the vicar only, without naming of

26. Aff.

The second Booke

of the person, for hee alone is Tenant of the freehold, and may haue a *iuris utrum*, (or other action) against the person. All which is to be vnderstood of an ancient indowment, but not for lands whereof hee is indowed by the Ordinarie.

Statutes.

Magna Charta cap. 36. A gift of lands to a Religious house, to take it backe to hold of them, is meere voyde, & the Land forfeit to the Lord.

Stat. de Religiosis, cap. 1. Land giuen in mortmaine, vnder colour of a terme, forfeit to the Lord, the immediate Lord hath one yeare to enter, the next Lord halfe a yeare, and so from Lord to Lord, till it come to the King.

2. cap. 41. The King (founder of a Religious house) may seise lands which he gauethem, if they alien.

See all the statutes of the dissolution of Monasteries, Chaunteries, &c.

CHAP. 2.

Of Possessions.

Of the Common Law there bee two parts.

One that concerneth Possessions.

The other the punishment of offences.

A possession is whatsoever may bee enjoyed.

Prerogative.

The King shall haue to his owne vse, & therefore may let to farme rendring a rent, all the possessions of a foole (a) naturall, not of any other Ideot (b) during his ideocie, but (c) not that which he hath title vnto by entrie or action. And therefore vpon an office (finding that the Ideots ancestors died seised of an estate taile) it is sufficient to traaverse the dying seised, for that only intituleth the King.

31. E. 3. San. def. 37.

(a) 18. E. 3. Seis. fac. 10.

(b) Stat. pro. 34.

(c) 1. H. 7. 24.

Statutes.

Prerogative cap. 9. The King shall haue the custodie of their lands during their life.

Prerogative

Prerogative cap. 10. And of Lunatickes, during their Lunacie, to their owne vse.

28 H. 8. Dy. 12.
Fitz.

When one hath the possession of any thing to anothers vse, this vse at the Common Law, was accounted nothing, but as a matter in conscience and Chancerie onely. Whereupon these Statutes following were made.

1. R. 3. cap. 1. *Cesti qui vse* may grant the land, or suffer a Recouerie of it.

4. H. 7. cap. 17. The heire of *Cesti qui vse*, (of land holden by Knights seruice) shal be in ward, and pay reliefe.

19. H. 7. cap. 15. Execution vpon iudgement, statute, or recognisance, shal be good against *Cesti qui vse*.

The heire of *Cesti qui vse* of land in Socage, shall pay reliefe, heriot, &c.

27. H. 8. ca 10. Where any be seised to the vse or trust of another, *Cesti qui vse*, or trust, shall haue the possession in such qualitie, manner, and condition, as he had the vse or trust. So when any be seised to the vse or intent that another shall haue a yearly rent out of the same lands, *Cesti qui vse* of the rent shal be deemed in the possession thereof, of like estate as he had that vse.

27. H. 8. cap. 16. Bargaines and sales to raise an vse of inheritance or freehold, must bee by deede indented and inrolled within sixe moneths, in a Court of Record at Westminster, or in the Countie where the land lieth.

Sundrie men possessing the same thing by purchase, are Jointenants, or Tenants in Common.

Jointenants which possesse by the same title. As if two, three, or more, be infeoffed of certain lands, to hold to them and their heires, or during their own or anothers life, or disseise another to their owne vse, or a lease be made, or a horse, or other Chattell personall giuen vnto them.

Lit. ca. of Jointer.

And here the suruiuor shall haue the whole in the same sort as he had his part, excepting onely present interests of the thing it selfe granted by him that dieth.

Lit. ibid.

As a Lease for yeares, though the Lessee neuer had possession, or though it be to begin at a day to come, and the Iointenant which made it, die before the day, bindeth the Suruiuor: for the Lessee hath a present interest.

Otherwise it is of a grant to haue a lease, if the grantee pay x. l. before midsummer next, and the Iointenant which made the grant, die before the day: for there is no interest

3. El. T. 103. Browne.

Lat. bid.

at all, but a communication onely, till the monie be paid. Otherwise it is also of a rent charge granted out of the land wherof they are Iointenants: for that is no interest in the land it selfe.

*Lit. chap. of tenants
in Common.*

Tenants in Common are they which possesse by severall titles.

As if two Iointenants bee, and one alieneth his part to another, the Alience, and the other Iointenant, are Tenants in Common: for the Alience commeth in by one of the Iointenants feoffement. So if three Iointenants be, & one alien that which to him appertaines in fee; the Alience is of this third part tenant in common, with the other two Iointenants: but they remaine still Iointenants of the other two parts. So if land be giuen to two men or two womē, and the heires of their two bodies engendered: the Donces haue a Ioint estate during their liues: but their issues are Tenants in Common of the inheritance. For euey one claimeth as heire of the bodie of his father. And it is impossible that two men or two women should haue one heire of their bodies betweene them begotten.

7.H.7.9.

So if land be giuen to a Maior & Comminaltie, and their successors, & to I.S. for I.S. taketh in his owner right, and the other in the right of the corporation. And therefore vpon a feoffement to a corporation, & another person, there must be severall liencies, in respect of their severall capacities, which

which maketh them tenants in common.

So if lands be giuen to two, *Habendum* the one moitie to the one, & the other moitie to the other. In like sort if a lease for yeares be made to two, or two buy a horse or oxe, and one grants that which to him appertaines of the terme, horse or oxe to another. *Lit. 3id.*

To possessions this is generall, that they may be granted.

Statutes.

3. H. 7. cap. 4. All deeds of gift of goods and chattels made of trust to ones own vse, shall be void.

13. Eliz. cap. 5. made perpetuall.

27. Eliz. cap. 1. Euerie gift, grant bargain, and conueiance, of lands & chattels, or of lease, rent, common, or other profits out of them, and euerie bond, suit, iudgement, and execution since the beginning of her Maiesties raigne, or herafter to be had or made, for the defrauding of any persons iust action, suit, debt, account, dammage, penaltie, forfeiture, heriot, mortuarie, or reliefe, shall be void against that person, his heires, executors, &c.

The parties or priuies knowing such a fraudulent gift which shall iustifie it to bee done *bona fide*, or shall alien such things so to them conueyed; forfeit one yeares value of the lāds or profits out of it, & the whole value of the goods and chattells, & the sum of such couenous bonds, & shal haue halfe

H 2

a yeares

a yerres prisonment: this act extendeth not to commō recoveries, nor vouchees in a form-don, nor to any gift, &c. *bona fide*, & vpon good cōsideratiō to any person, not knowing of any fraud.

27. *Eliz. cap 4.* Euerie conueyance, grant, charge, lease, estate, incumbrance, and limitation of vse of Lands, tenements, or hereditaments, made since the beginning of her Maiesties raign, or hereafter to be made, for the defrauding of purchasors of the land it selfe, or any part or profit out of it, shal be voyde against the person so purchasing for monie, or other good consideration, and against all claiming vnder him; with penalte, as in the former statute.

This extendeth not to the auoiding of any grant &c. vpon good consideration and *bona fide*. If any such conueiance &c. be made with a clause of reuocation or alteration at his pleasure, by writing; and after he shall bargain, demise, sel, grant, conuey, or charge the same lands &c. for monie or other good consideration (the conueyance not reuoked or altered) then the conueyance &c. shall be void against the bargainees, &c. and all claiming vnder them (lawful mortgages only excepted.)

Prerogative.

Euerie grant made by the King, vpon
surmise

surmise or suit of the partie, shall bee taken most beneficially for the King, and against the partie So as a pardon to the Sheriffe *ex speciali gratia & mero motu* of all misprisions, offences, contempts, and deceits, shall discharge him of an amerciament, for returning of one *Quarto exactus*, whereindeede he was outlawed. But if himselfe sue for such a pardō, he must haue expresse words, otherwise it will not helpe him. 37.H.6.31.

His grant shall not be taken to two intents; that is, **S**hall not inure to any other intent than that which is precisely expressed within the grant.

As if he grant an office for life to an Alien, it is nothing worth: for it cannot inure also to make him a Denisen. 9.E.4.Den.1.

If he grant land to A. in fee, which A. is his villeine; this shall not manumise him: for the villenage is a forrein matter not expressed in the grant. 19.El.Ploy.502.

But the King may create a Duke, and in that patent grant him Land by the same name, or make a Maior or Comminalty, & by the same patent, giue them Land, or grant them licence to purchase: for these are two seuerall things expressed in the Grant. Dr.patents 44.

No grant of his is good, when it appeareth within the bodie of the grant, that the King is deceiued.

As if he giue lands to one and his heires males 18.H.3.E.4.104

males. For this is a fee simple, and it is plain, the king meant to grant but an estate taile.

Statutes.

1. H. 4. cap. 6. The Kings grants shall be void, if expresse mention be not made of the value, in the Petition of those that sue for it.

F.N.B. 103.

26.H.8.2.

(a) F.N.B. 101.8.

7.H.4.5.12.

(b) 9.H.7.24.

(c) 39.H.6.50.

A grant by an infant vnder the age of 21. yeares, (a) one out of his right mind; whom we cal non sane memorie, or non compos mentis, or compelled thereunto either by (b) dures of imprisonment, or feare of some bodily hurt threathned to himself, not to his father, mother, brother, &c. as losse of life & member: or though it be but of imprisonment: for imprisonment is a corporal pain, & one may be imprisoned that he may die of it. Otherwise it is of a menace to breake or burne downe ones house; for that is but the losse of ones goods, is auoidable, that is to say may be auoided at any time be entrie action, &c. if they deliuer it with their hād: as in a feoffement, and themselues make liuerie, or a gift of goods, and themselues deliuer them.

But if they deliuer it not with their hand, as in a grant of a rent, aduowson, &c. or a feoffement by letter of Attornie, &c. it is meere void, and nothing at all passeth:

So

So as they may haue a trespas or assise, and remaine Tenant to the Lord, and therefore shal be in ward, notwithstanding any such feoffement.

So of a grant made by one that hath no vnderstanding. *Park. 5.* As if he be borne dumbe, deafe, and blind. But one dumb may make a good grant, or borne dumbe & deafe. For diuers may haue vnderstanding by their sight onely, though dumbe and blinde.

Grants of an infant, in respect of hauing things necessarie, cannot be avoided.

As a bargaine for his necessarie meate, *18. E. 4. 2.* drinke, & apparell: for he cannot liue without them.

Other grants of his where himself hath likewise benefit. We call it *Quid pro quo*, as onely boydable, as if he let land for yeares, *18. 6. 4. ibid.* reseruing a rent.

To this place belongeth exchange, which is a mutuall grant of equall interests, each in exchange of other. *Lit. 13.*

As of land in fee simple, for other of the same estate. But to exchange an estate *pur auter vie*, for an estate for life is not good. *Park. 55:* For though both haue a free hold, yet an estate during anothers life, is not so high a freehold, as an estate during his owne life. And in euerie exchange there be two grāts, *Lit. 13.*

9.E.4.21.

for each graunteth to other his land in exchange. And the verie word it selfe of exchange is necessarie: For if I giue to a man an acre of land by deede indented, and hee by the same deede giue vnto me another acre for the same acre, nothing passeth without liuerie, if the word Exchange bee not in.

Lit. 40.

19.H.6.34.

Lit. *ibid.*3.E.3.Br. *in id.* 39Lit. *ibid.*

(4) 12.H.7.18.

Prescription is as auailable as any grant. As that one and his ancestors, time out of mind, haue beene seised of a certaine yearely rent out of land, & distreyned for it being behind. Or if a velleine and his ancestors, as of villeines in grosse; or that one, and those whose estate he hath in the Manor of D. haue had a park there time out of mind. For of such things as cannot be granted without deede or fine, the prescription must be in him & the ancestors, whose heire he is: and not in himselfe, and those whose estate he hath: because he cannot haue their estate without writing, which must bee shewed to the Court. As of a villeine in grosse, a (a) hundred rent &c. Otherwise it is of things appendant or regardant to a mannor

A possession is either vpon a limitation, or condition, or else absolute.

11.H.7.17.

Upon a limitation which ceaseth vpon the doing or not doing of something. As a lease for yeares, vpon condition if the lessee goe not

not to Rome by such a day, his estate shall cease. And therefore in this case the grantee of the reversion may enter, if he go not: for thereby his estate is determined & void. So if lands be given to husband and wife during the coverture: or a Parson make a lease to one so long as he is parson; this in both cases is an estate for life upon limitation.

Lit. 90.

Upon condition, which is onely defeasible upon the doing or not doing of something.

As a lease for yeares or life, upon condition if the lessee go not to Rome by such a day, the Lessor and his heires may reenter. And therefore here the grantee of the reversion cannot reenter for the condition broken. So if a man by deed indented, in fee offe another in fee simple, or make a gift in taile, or a lease for life or yeares, reserving to him & his heires a yerely rent, payable at a certain time, upon condition, if the rent be behind &c. it shall be lawfull for him & his heires into the same lands or tenements to reenter &c. In these cases if the rent be not paid at or before the time limited in the condition; the feoffor or his heires may enter in such lands or tenements, and them have & hold in his first estate, and thereof quit and cleane to ouste the feoffee, donee, or Lessee, &c. And this is termed a condition in deed. So of such estates as have by the law, a condition annexed vnto them; although it be not specified in the writing. As a man graunteth to another by his Deede, the office

Lit. 74. & 89.

office of a Parkerſhip of his parke, to have and occupie the ſame office for term of his life; the eſtate which he hath in the office, is vpon condition in Law: that is to ſay, that he doe well and lawfully keepe the park, & do that which to the office appertaines, otherwiſe the grantour and his heires may lawfully ouſt him, and grant it to another. And ſuch a condition which is vnderſtood by the law to be annexed to any thing, is as ſtrong as if the condition were put in writing.

In the ſame maner it is of the grant of a ſtewardſhip, Bedleſhip, Bailiwick, or other offices.

Absolute, which is neither vpon limitation nor condition.

Againe, poſſeſſions are in being, which properly wee terme in poſſeſſion or in Action.

In poſſeſſion, which one doth inioy.

In action, which one ought to inioy, either in reſpect of a right or title.

15. El. Plow. 555.
Maxim.

Right is when a wrong was done before: as by wrongfull entrie vpon his lands, or taking away his goods, &c.

Title, when no wrong was done.

As in a feoffement vpon condition, and the feoffee breakech the condition.

Of

Of things in action : as cause and matter of suit, entrie to continue ones right, or vpon title : as for a condition broken, & such like, **no stranger shall take advantage** And strangers are accounted (besides the parties themselves, which are not either priue in blood, as the heire to the feoffor : or in succession, as the successor of Maior and cominallty, &c. or executor, administrator, &c. which represent the testator.

*Preamble of 32 H.
8.8 cap. for recistering
the Common Law.*

Park. 164.

Statutes.

32 H. 8. cap. 34. All grantees of reuerfions may enter vpon Farmors, for any forfeiture (or condition) and haue like aduantages against them (by action only) for any other couenants, condition, or agreement contained in the Indenture of their lease) as the Lessors, their heirs, or successors might And the like for the Lessees against the grantees of the reuerfions (recoverie in value onely except.

Therefore things in action cannot bee granted but to him that hath possession: and that by release or confirmation; for a release or confirmation of land to him that hath nothing in the land, is void.

I. H. 64.

Release is a passing of the grantors interest. The forme whereof is, *De me & hered. quietum clamauit, &c.*

Lit. 105.

Confirma-

Confirmation is a ratifying of the grantees possession. The forme whereof is. *Con. firmani C. de D. statum & possessionem &c.*

Furthermoze, the grant of euerie thing in action, and of such things in possession as cannot passe by liuerie of the hand, must of necessitie be by deede. For the right of the thing Reall or personall, cannot be giuen nor released by parol. No more can a reuerfion, rent, common in grosse, or villeine in grosse, be granted by paroll. But a horse, ox, or such personall thing, corne, & trees growing vpon the ground may: and also the wardship of bodie or land.

So a lease for life, with a remainder ouer, is good without deed: for the remainder passeth by liuerie and feisin.

A Deede is a writing sealed and deliuered. For if either a parchment without Writing bee deliuered as ones Deede, yet it is not his Deed, though an Obligation be afterwards written in it: or if it be a writing but not sealed at the time of the deliuerie of it as his Deede, it is a scroule and not his deed. Or if I make & seale a deede, and the partie take it without my deliuey, I may plead it is not my deed. **And belongeth alwaies to him whose possession is made by it.** As if I release to two disseisors, and deliuer the Deede to one, the other suruiuing shall haue it. Or if the Disseisee release to the Disseisor, and hee make

Lit. 119.

6. H. 7. 9.

Falk. 13.

Park. 25.

Park. 27.

9. H. 6. 37.

34. H. 6. 1.

6. H. 7. 3.

make a feoffement of the land, the feoffee shall haue the release. But if a feoffement to two without deede, and the writings of the land are deliuered to the one, the other shall not haue them: or if hauing two joint feoffees, I release to both, and deliuer the Deede to one, the other though he suruiue, shall not haue it.

But a writing read in another forme to one not lettered, that is, that cannot read, is not his deede at all, though he seale and deliuer it.

1. H. 7.

A deed is a deede poll or indenture.

Lit.

Poll, that which is the onely Deed of the grantor.

Indenture, that which is the mutuall Deede of both: yet the deed of the grantor is the principal, and the other is but a counterpane. And therefore if the Lessor seale, and not the lessee, it is as good against him as if both had sealed. And if there happen any variance betweene the deeds, it shall be taken as the deed of the grantor is, and the other shal be intended onely the misprision of the writer.

Lit. 88.

14. El.

And baketh them from saying contrary to any thing in the Indenture. As vpon a lease by indenture or fine, both parties are estopped to say that the lessor had nothing in the lād: so as if the lessor come afterward to haue the Land by purchase or discent,

15. El. Pl. 434.

the

the Lessee may enter vpon him by way of conclusion, and likewise the Lessee shall by estoppel, be driuen to pay the rent.

Lit. 149.

Sometime bare acts, without indenture or other matter. **M**ake an estoppel in like sort. As if the husband discontinue the wifes land, and take backe to him and his wife for their liues: the wife is remitted, but the husband (by this bare taking back, is estopped to say so.

CHAP.

CHAP. 3.

Of Hereditaments, where : of Estates.

A Possession is an Hereditament or Chattell.

Hereditament is a possession which one may have an Estate in.

One borne of Parents out of the Kings allegiance; such an one we call an alien.

But (a) an an aliens Sonne, borne in England is no alien : Nor by the Common

Law, one borne beyond Sea, of English Parents, in the Kings subiection. And the

Statute 25. E. 3. onely maketh it more cleere; is disabled to enioy any heredita-

ments, he shall haue no (b) reall nor mixt action, nor is inheritable: but either his

yonger brother being a denizen, shall haue it, or the (c) Lord by Escheat.

(a) 36. H. 8. Br. denizen. 9.
1 R. 3. 2 Huffy.

(b) 38 H. 8. Br. denizen 10. & 16.

(c) So Doff. & Stud shinketh Br. denizen 7.

Prerogative.

Therefore such a one purchasing

(d) any, though it be but for yeares, it is the Kings.

(d) 14 H. 4. 20.
c. Mar. Br. denizen 25.

An Estate is particular, or an inheritance,

And is Uncertaine, or Certaine.

Uncertaine,

Uncertaine, which is determinable at anothers pleasure, as an estate at sufferance, and at will.

7.E.4.6.

At sufferance, when after lawfull occupation, he continueth possessor without authority.

As lessee for yeres, holding in after his terme expired, and before any entry made vpon him. But if he continue after entrie vpon him, then is he a wrong doer.

Lit 24.

14.H.8.12.

At will, when an estate is made during pleasure.

Statutes.

6.H.8 cap 15. If the King giue land, or an office, *durante bene placito*, & after grant the same vnto another: the second graunt shall be void, if mention be not made therein of the first.

7 E. 6 Tley 83.

(4) 11.H.4.42.

4.E.6.Tley 29.

Certaine, which is not so determinable, And is called a terme, whereupon may depend a remainder or reuerſion: for a remainder cannot bee but vpon a particular estate precedent. As vpon a lease for yeres or life, vpon an (a) estate to one & his heirs during the life of I S for in effect it is but an estate for life. But not vpon an estate to one and his heires, so long as I.S. hath heires of his

bodie

bodie; For that is a fee simple determinable. Nor (b) at the Common law, vpon an estate to one & the heires of his bodie: for it was a fee simple cōditionally; (c) neither could any reuerſion be of it.

(b) 3 E. Pl. 235.
& 247.
(c) *ibid.*

Remainder, is a residue of the estate, at the same time appointed ouer: and therefore cannot be said to be *ex assignatione*, but *ex dimissione* of the Lessor, because it passeth at the same time.

38 H. 6. 30.

Reuerſion is a residue of the estate, not at the same time appointed ouer. As if a man let land for life, without saying more; the reuerſion of the fee simple is in the lessor. And if he afterwards grant this to another, the grantee hath a reuerſion.

Lit.

Termes are forfeited by plucking the inheritance out of him that hath it. As if tenant for life (or yeres) of land make a feofment in fee: for thereby the fee simple passeth, by reason of the liuerie.

Lit. 137.
a fundamenti legi.
p Br. Forf. 96.

Otherwise it is, if tenāt for life of a reuerſion or rent, grant it by his deede in fee: or if tenant (b) for life take a fine of a stranger, *sur conuſance de droit*, or *sur release*; for such a fine increaseth not his estate. But a (c) fine by tenant for life to a stranger, *sur conuſance de droit come ceo quil ad de son done*, is a forfeiture. So if tenant for life (d) pray in aide of a stranger, or (in (e) a writ of right brought against him) ioine the mise vpon the more

(b) 1. H. 7. 22.

(c) 42. H. 3. 20.

(d) 9. H. 7. 20.

(e) 9. H. 5. 14.

I

right.

right. And these are by reason of the estoppel.

12.H.4.21.

22.H.6.5.

Park.113.

Park.114.

Park.115.

Termes may be surrendred: that is to say, yeelded vp and drowned For a surrender cannot be of a fee simple. **to him that the next and higher estate.** As two Iointenants, and to the heires of one, hee that hath the freehold cannot surrender to the other: for both haue a ioynt possession, and the same estate. But Tenants in Common may: As the alienee of him that hath the free hold in the former case, may surrender to the other Tenant for life, where there is a remainder for life with remainder ouer in fee, cannot surrender to him in the remainder in fee; for he hath not the next immediate estate. Lessee for life cannot surrender to him in the remainder for yeres: But to him in the remainder for life hee may, for that remainder (as vnto him in the remainder) is an higher Freehold than the others estate, which is vnto him but *per auter vie*.

Statutes.

Gloucester cap. 7. Tenant in Dower, alienating longer than during his owne life, he in the reuersion shal recouer against the Alienee in her life time.

A terme is for yeares, or life. The present estate for life is termed a Free-hold (in deede) if he be actually seised of it (in Law) before his entrie, when it is cast vpon him by

by course of Law; as vpon the heire by death of his ancestor; vpon him in the remainder by death of the particuler Tenant.

A terme for life is either for his owne or pur anter vie, that is, for anothers life, where the tenant pur anter vie dyng before the other, whom we terme Cessi qui vie, hee that can first hap it, shal inioyn out the term, and is named an occupant, but if land be let to one and his heires during anothers life, the heire shall put out the occupant.

Lit. 167.

Inheritance followeth. Euerie Inheritance at the Common Law is called a Fee simple: The release wherof, or of an estate for life, is not good to one that is but tenant for yeares, without pr. iudic. As if Tenant for life or in fee, release to the Lessee for yeares of his disseisor. But the release of a terme for yeares to the Lessee for yeares of him that doth eie & him, is good enough: for there needs no pr. iudic.

9. H. 6. 44.

And to these two estates of inheritance, and life, warrantie doth belong: which is an assurance warranting such an estate: for the word Warrantizabimus, onely maketh a warrantie, and not defendemus. And if a lease for yeres be made with warrantie, this sounds not in nature of warrantie, but of a couenant, because it is a chattell. And if the Lessee be ousted, yet hee may haue an action of Couenant. But in a warranty of a fee or Free-hold, the partie shall haue no aduantage vnlesse he be tenant of the land.

Lit. 166.
26. H. 8. 3.

3.E.3 form 44.

Euerie exchange hath a warranty butt by law. And therefore the Exchangor or his heire may vouch to warrantie by an exchange without deede, and his Assignee re-butte.

Lit. 1.

Inheritance is an estate descendable: for inheritance neuer lineally ascends, as from the sonne (that purchaseth in fee simple, & dieth without issue) to the father: but alwaies discends, as to the vncler, brother, &c. **to his heires that hath actuell possession.**

Lit. 2.

As if the eldest brother once enter, his sister of whole blood shall inherite, & not his brother of the halfe blood. But if he neuer enter, the brother of the half blood shall inherite as heire to his father.

Lit. 2. 1.

An heire is the next of worthiest of whole blood: for the halfe blood is inheritable, being also of blood to the first purchaser.

Lit. 2. 63.

So the blood of the fathers side is worthier than the mothers: the elder brother worthier than the rest. Therefore these shall inherite first.

49.E.3. 12.

So, lands purchased may go to the heires of the part both of the father and mother of the purchaser, vnlesse it be once attached in the heire of the part of the father; for the heire of the part of the mother shall neuer haue it, because they are not of blood to him that was last seised.

But

But Lands discended goe onely to the heire of that part from whence it discends : as if from the father who did purchase it ; then it may goe to the heires of the part of the mother of the same father , but not to the heires of the part of the sonnes mother. For though they be of blood to the sonne that was last seised : yet they are not of blood to the father which was the first purchaser.

He that is begottē out of mariage, is called a bastard: for if a womā great with child take a husband, the issue borne (though it be within sixe weekes after) is no Bastard. Or if the wife clope from her husband, and continue in adultrie, yet the issue borne during that time (if both bee within the foure Seas) is intended lawfully begotten. And if one die, his wife priuement inseint (that is, so with child as it is not discerned) and she take another husband, the issue borne within a moneth (or such a time as it is impossible he should beget it) shall be accounted the son of her first husband, and such a bastard is of blood to none : in Law, (a) *nullius filius*.

1.H.6.3.

1.H.6.3id.

7.H.4.9.

21.E.3.29.

(a) Lit. 41.

And therefore cannot inherite: nor bring (b) a Writ of Detinue as heire ; nor bee a villeine (c) but by his owne confession in Court of Record : and the land shall (d) escheate where there is no issue but such a bastard, nor other heire.

(b) 35.H.6.9.

(c) Lit. 41.

(d) 2.E.2.44.30.

(e) Lit. 94.

(f) 17. E. 3. 59:
bail 32.(g) 3. El. per Dy.
in fr Tb Gerrar. c.

(h) 2. S. 3. 16.

(i) 36. 4 Pl. 2.
Br. discent 29.

(k) Lit. 94.

But (e) marriage following after, gath-
neth him the right of inheritance, if after
the fathers death he enter befoze his yon-
ger brother, (f) or sister if both be females,
borne (g) of the same father and mo-
ther within espousals: who is called *mu-
lier puisne*, and the other *Bastard eigne*, and
continue (h) the possession all his life with-
out interruption. And that (i) although the
mulier puisne be an infant: because this bin-
deth the right. For (k) such a bastard is a
Mulier by the Law of Holy-Church: and
therefore hath a colour to enter as heire to
his father.

Lit. 53.

If the next be women in equall distance,
as daughters, sisters, Nunts, &c. they shall
inherit alike, and are but as one heire, cal-
led parceners or coparceners.

Lit. 160.

Where the generall entrie of one, is of
the rest, if they liue. So is not a speciall en-
trie to her owne use.

As if Tenant in Taile haue issue two
daughters, and the eldest entred into the
whole, and thereof maketh a feoffment
with warrantie; this is a collaterall War-
rantie, and a barre to the puisne daughter
for her moitie. Which proueth, That this
speciall entrie is not the entrie of both: for
then it were a Warrantie commencing the
disseisin, and no barre. But all this is to be
vnderstood where the other coparceners list
to haue an entrie for them, and not other-
wise.

wise. And therefore in a *Partitione facienda* of rent, it is a good plea for the defendant if she is sole seised, without that, that she holds *pro indiviso*. And the plaintife is driven to a *nuper obijt*. And if one enter, both cannot be vouched as heires, for that is to their disaduantage. But both may haue an assise. 4.H.7.9. 43.E.3.19.

The inheritance it selfe that descendeth, shall bee charged by the deed of the same (a) Incestor, (a) 10.E.4.10.

Whether Obligation, couenant, annuity, warrantie, or whatsoeuer else: but not by any bare matter (b) *en fait*, as of ones Ancestor time out of mind haue beene woont to pay an annuitie, &c. (b) 10.E.4.10.

Binding himselfe and his heires.

But if either a man bind his heirs to pay xx.l. a yere, or such like, but not himself; or himself (d) without naming his heirs: there the heire shall not be charged, though he haue assets by descent. And therefore (e) the heire being charged onely by reason of assets, when he hath assets, the same is counted his owndebt, & the action of debt lieth against him in the *debet & detinet*, not in the *detinet* onely. And for one acre onely by descent, the heire shall be chargeable to an Obligation of 1000.l. but no other land shall be put in execution, but it. So, though it bee but a reuersion that descendeth: In which case the Iudgement shall be *Quod*

(c) 31.E.1.gr.85.

(d) 15 El.Pl.457.

Br. Annuities

13.2.H.4.4.13.

(e) 15.El.Pl.441.

17.El.Dy.344.

40.E.3.15.

recuperet debitum, & damna de predicta reuersione leuanda cum acciderit. And a special Writ shall goe out to extend the whole.

Statutes.

Merton. cap. 5. A *Nomine pæne* shal not incurre vpon an heire within age.

Lit. ca. of descents.

The dying seised of the inheritance and freehold together. Not of a free-hold onely, as of an estate for his own or anothers life, nor of a remainder or reuersion where the Free-hold is out of him.

Lit. ibid.

Whereby the land discendes unto his heire. For if it escheate, as by the death of the Alience of the Disseisor, without heire, the disseisee may enter; **taketh away the entrie of enerie one,** We call it a discent that tolleth entry, whether it be of one that hath right, as in the dying seised of a disseisor, (a) abator, (b) or intrudor; or of one that hath but title **that may haue an action:** as an Infant (c) whose feoffee after his full age, dieth seised: hee (d) in thereuersion, where tenant for life doth Alien, and the Alience dieth seised; the Deuisee (e) of land in London, if the heire enter and die seised. For the Infant may haue a *Dum fuit infra ætatem*, he in the reuersion a *consimili casu*, & the Deuisee in that case an *ex graui querela*. But if the Disseisor of the feoffee vpon condition, or an Alience in Mortmain die seised

(a) *Lit. ibid.*

(b) 4 E. 6. Pl. 47.

(c) *Lit. 96.*

(d) 21. H. 6. 17.

(e) 9 H. 6. 25.

21. H. 6. 17.

33. Aff. pl. 11.

47. E. 3. 11.

1. E. 6. Br. De-

uise 36.

seised: or if a man deuise, that I. S. shal sell his lands at London, &c. and the heire bee disseised or make a feoffement, and the Disseisor or feoffee die seised: yet the feoffor vpon condition in the first case, the lord of whom the land is holden in the second case, and I. S. in the last case may enter, notwithstanding any descent: for they haue no remedie.

But claime vpon the Land within a yere befoze the death, it is called continual claime, or if they dare not vpon the land for feare of some bodily hurt, then as neere the Land as they dare, sancth their entrie.

*Lit. chap. of contin.
cla. 100.*

Statutes.

32. H. 8. cap. 23. The dying seised of a disseisor by strength, and without title, tol- leth not the entrie of him and his heires, which at the time of the descent had good title of entrie, vnlesse the disseisor had peaceable possession by five yeres next after the disseisin.

A fee simple, is a fee simple, conditionall

or absolute.

Conditionall is a fee simple to one and the heires of his bodie: for that is a fee simple at the Common law: but the hauing of issue

40. EL. Pl. 250.

issue made it a more perfect fee simple than before.

30. E. 1. Form. 85.

Which before issue cannot bee alienated, after issue had, becommeth an absolute fee simple.

(a) 7 E. 3. 36. 8.

per a El.

11 Pl. 249.

30. E. 1. ibid.

And may be alienated or forfeited by attainder of felonie. But so, as if the Issue falle before the alienation, the donor, or giuer, shall haue it.

And this by the statute of Westm. 2. c. 1. being restrained from all alienation (to the preiudice of the Issues) and that so as by the verie words of the Statute, a reuerſion depends vpon it; is now become, and made by the construction of that Statute, a new kind of estate, deuided from a fee simple, & called an estate Taile. Which name for plainesse sake we vse hereafter, calling the other onely a fee simple. And the name of Inheritance we applie indifferently to them both. In which sence all common vse doth take those words.

Statutes.

Westm. 2. cap. 1. The Will of the giuer (according to the forme in the Deede of Gift manifestly expressed) shall bee from henceforth obserued. So that they to who the land was giuen vnder such condition, shall haue no power to alien the land so giuen

uen, but that it shall remaine to their issue after their death, or shal reuert to the giuer or his heires (if issue faile) neither shall the second husband of any such woman from henceforth haue any thing of the land so giuen, vpon condition after the death of his wife (by the Law of England) nor the issue of the husband and wife shal succeed in the Inheritance: but immediatly after the death of the husband & wife (to whom the land was giuen) it shall returne to their issue, or to the giuer or his Heires, as afore-said.

34. & 35. H. 8. cap. 20. No common recouerie of lands in taile, of the gift or other prouision of the King or his Progenitors, (though it be with voucher against tenant in taile, the remainder or reuersion beeing in the king at the time of the recouerie) shal bind the heire in taile, or barre him of his entrie. Tenaunt in taile shall take no aduantage for any recompence in value against the vouchee or his heires.

Wither belong hereditaments giuen in franke marriage; that is to say, freely in marriage with ones kinswoman.

For the verie word Franke marriage implieth an inheritance to the Donors, & the heires of their two bodies begotten.

But land cannot be giuen in Frank marriage with a man that is Cosen to the Donor;

Lit. 4. & 60.

H. 8. Br. Fran. 10.

nor, but alwayes with a woman.

Absolute, is a fee simple to one and his heires whatsoever: which discending to female (if one of them have lands of the same Ancestor by frankemariage) she shal have no more unlesse she be content to put those lands in Hotchpot; that is, that the value thereof be allowed to the other.

Lit. 58.

As if x. acres were given to her in Frankemariage, and xx. acres more (all of equal value) descend from the same donor, she putting all together that that value may be knowne, shall retaine her own x. and have v. acres more.

Lit. 61.

But if the lands descend from the father of the Donor, or other Ancestor, and not the Donor himselfe; she shall have her part in that which descendeth, without putting in Hotchpot: for she is not aduanced by him, but by the other.

Lit. 61.

No more shall any Hotchpot bee, but in lands given in frankemariage. For if a woman have lands by any other gift, she shall have her part of that which descendeth, as if no such gift had beene. And the reason of all this is, for that (if she wil not put the land in Hotchpot) the Law intendeth that she holds her selfe sufficiently aduanced. And note, that vpon the Hotchpot, the lands given in frank marriage must alwaies remaine to the Donee.

Lit. 59.

To this place are to be referred Lands
giuen to a Coppozation, which goe in per-
petual succession.

And therefore Lands giuen to a Maior a
Comminaltie, without saying, And to their
successors, is a Fee simple, and though the
Grant be for their liues. For those are voyd
words. 27.H.8.15.

And a colour in an Action of Trespasse,
cannot be giuen in a Corporation by a lease
for terme of their liues: for beeing a Bodie
politicke (which neuer dieth) they cannot
haue such an estate. 31.E.4.66

Here two spectall estates for life; dowry,
& Tenancie by the curtesie of England, do
arise after ones death that hath an inheri-
tance toynd with the freehold.

For they (a) may be of a reuersion depen-
ding vpon an estate for yeares, and conse-
quently of the rent, if any be reserved. But (a) 1.El.C.B.

(b) not where one hath an estate for life, the
remainder to another in taile, the remain-
(b) 40.E.3.15.

der to his owne right heire: whether it bee
a fee simple, or such an estate taile as may
goe to the issue had betwene the Donors;
that wife, or that husband (if the Donor be
a woman.) As if lands bee giuen to a man
and the heires that he shall beget of the bo-
die of his wife, the same wife shall bee in-
dowed, but not a second wife. And of lands
giuen to a woman & the heires of her body
begottē by the husband, her husband may be
tenant by curtesie, but not a second. So of
lands

Lit. chap. of dowry.

4.El. Pl. 339.

21. chap. of dower.

landssgiuen before the Statute of West. 2. to a man, and a woman, and the heires of their two bodies, the second wife shall not be endowed, nor the second husband be Tenant by courtesie, for their issue cannot inherite. But in both cases the wife of every issue (inheriting by force of that gift) shall be endowed, and the husband of every such issue may be tenant by courtesie. So of Lands giuen to a man and the heires of his bodie, or to a woman and the heires of her bodie, whatsoever wife the husband taketh may be endowed, & whatsoever husband the wife taketh may be Tenant by courtesie.

22. 7.

9 F. 4. 47.

(b) 2 H 7 6.

Dower is an estate whereby the woman hath the thirds in feneralitie, who must be nine yeares of age at the time of her husbands death. Detaining of Dades concerning inheritance descended to the heire, is a barre of her Dower, so long as she deteinet them; but (b) so it is not of lands purchased by the heire.

Let. chap. of dower.

(c) So he must be.
Littles, 8.

(d) F. N. B. 150.

(e) 8 E. 2 dower.

154.

(f) Park. 86.

(g) 44. E. 3. 43.

If the husband at the Church doore, (which is called an endowment, *ad ossium Ecclesia*, or, being (c) heire apparant by the fathers or mothers consent, which is called an endowment, *ex assensu patris* or (d) *matris*, &c. for the (e) Sonne must make the endowment, and they assent, doe (f) presently upon affiance, not (g) before espousals, endow her of any certainty, as of

of the whole moiety, or lesse part, &c. this shall barre her of the thirds if she agree to it. But so shal not an endowment, *ad osium camera*, nor, *ex assensu fratris*, or *consanguinei*: *F.N.B. 150. F.N. B. 150. 21 H. 6. 25.* Therefore it is at her election after her husbands death to hold her to this endowment, or to take her Dower at the Common law. And in such endowments the wife may enter after her husbands death, without any bodies assignment, (because the certainty of the land which shee shall haue appeareth) which in dower at the Common law she cannot. *Little. 8.*

Statutes.

Magn. Chart. cap. 7. The wife, after the death of her husband, shall abide in his chiefe messuage forty daies, within which time, her dower shall bee assigned her. If the chiefe messuage be a Castle, then she shall haue a competent house prouided her till her dower be assigned.

Westm. 2. cap. 34. A woman that leaueth her husband, and abideth with an Adulterer, shall not haue dower, vnlesse the husband (voluntarily, and without coercion of the Church) reconcile himselfe, and suffer her to inhabite with him.

1 R. 2. 7. cap. 20 If a woman that hath an estate in dower for life, or in taile ioyntly with her husband, or onely to her selfe,
-or

or to her vse in any lands, &c. of the inheritance or purchase of her husband, or giuen to the husband & wife by the husbands ancestors, or any seised to the vse of the husband or his ancestors, do sole (or with an after taken husband) discontinue or suffer a recouerie by couin, it shall be void. And he to whom the land ought to belong after the death of the said woman may enter (as the woman had beene dead) without any discontinuance or recouerie: Prouided, that shee may enter after the husbands death. But if the woman were sole, the recouerie or discontinuance barreth her for euer

This act extends not to any recouerie or discontinuance with the heire next inheritable to the woman, or by his consent of Record inrolled.

27. B. 8. cap. 20. Where an estate is made in possession or vse to husband and wife, and his heirs, or the heirs of their two bodies, or to them for their liues, or for the wiues life for her Iointure, shee shall not haue any dower: vpon a lawfull euiction of that Iointure, she shall be indowed according to the rate of land of her husbands, whereof she was dowable.

Such a joynture being made after marriage, the wife (after her husbands death) may refuse it, and betake her to her dower, vnlesse the Iointure be made by Act of parliament.

Tenancie by the curtesie of England is

estate, whereby of an actual possession,
the husband that had issue by her borne
alive (whether the issue be male or female,
heard, or scene, and whether it afterwards
die or live, or if (a) the issue be borne alive,
it is sufficient, though it bee not heard to
crie (in as much as he may be borne dumbe)
shall have the whole.

Lit. 7.

*(a) 28 H. 8. Dyer
25. Fitz.*

Park. 90. & 89.

But no tenancie by curtesie shall be of a
possession in Law. As where lands descend
to the wife, and she dieth before the entry
by her, or her husband, or any for them. Nor
of a thing in suspense: As where tenant in
fee of the Land, marieth a woman that is
seised of the seigniorie in fee; the husband
can neuer be tenant by the curtesie of the
Seigniorie: for by the intermarriage it is
suspended. And it is called tenancie by the
courtesie of England, because no other
Realme vseth it.

Litt. 7.

K

CHAP.

C H A P. 4.

of Land.

Hereditaments, or tenements, or bare hereditaments.

A tenement is a possession holden, the fee simple wherof, when he that hath it dieth without heire, cometh to the Lord.

Which is called an escheate. As if Land discend from the father, and he die without an heire of the part of the father. Or a Bastard purchase land, and die without Issue.

Of this sort are lands and Adwosions.

Land is a tenement or manuell occupation.

For if the tenant of twentie acres of land before *Quia emptores terrarum*, make a feofment of one of the acres, to hold of him by vj. d. and dieth without heire; the Lord shal haue a Writ of Escheate, supposing that he held of him xix. acres, and vj. pence rent, yet indeed he held not the rent but the land: And in his count he shal declare al the speciall matter. So in a Writ of Ward of the heire

heire of the mesne ; the Writ shall suppose the rent to be holden, and declare specially. Or hee may haue a generall Writ of the land, or a speciall Writ, because the Mesne held the land *unde redditus ille prouenit*. All which proueth, that indeed not the seigniorie, but the land is holden. Therefore of land rent &c. the pleading is, he was seised of his demesne as of fee. But an aduowson lieth not in manuell occupation : therefore the pleading there, is, He was seised in fee, without saying in demesne. F. N. B. 139. a

Under the name of land are comprehended not only gardens, medowes, pastures, woods, rivers, &c. but also messuages, tofts, mills, Castles, and such like. L. 3.

For in a *Præcipe quod reddat* of a messuage, the warrant of Attornie, is *quod talis Po lo suo (i.) posuit loco suo l. S. in placitis terre.*

Churches and Church-yards belong to the Incumbent. II. H. 4. 13

For things annexed to the Church or Glebe : as trees or grasse growing there, are the Parsons ; and hee shall haue an Action for them, and for entrie into the Church-yard or Glebe. And if he be eiected out of his Church, and another take the profits, he may haue an assise of the Rectorie, Church yard, and Glebe : for it is his Freehold. 38. H. 6. 26.

Doñ. Stud. 16.

Description here is of no force. For it maketh no right in land, but in rent or profit out of land.

Prerogative.

50. Aff. pl. 1.

18 El. Ploy. 498.

All land is holden of the King immediately, or by meanes: himselfe having not any higher vpon earth, of whom to hold.

3 E. 3. E. Cheat 12.

3 El. Ploy. 314

Escheates of all cities appertaine vnto the King. All mines of gold and silver or wherin the gold and silver is of the greater value, are the Kings.

*14. H. 3. stat. Hib.
doñ. so recite it.*

Among coparceners the eldest vpon partition shall haue the chiefe house.

Lit. 137.

4. E. 6. Ploy 25.

Lit. 12.

(a) Lit. 109.

(b) Lit. 121.

Seisin deliuered of land, we call it liuerie of seisin; & the making of the estate wee call a feoffement, alwaies passeth a free hold, though he be but Tenant for yeares, at will, or sufferance, that maketh it. And otherwise a free hold of land cannot passe saue by release (a) a confirmation, (b) where they were by way of inlaing an estate. As a lease for yeares, and afterwards release or confirme to the Lessee, to haue and to hold to him for life, or to him & the heires of his bodie, or to him and to his heires, &c. for a feoffement with liuerie made by one to his Tenant (c) at will, or (d) for yeares, is void, except it be by Deede, and then it shall inure by way of confirmation.

*(c) 22. H. 6 43.
(d) 12. E. 4. 38.*

Exchanges.

Exchanges, (e) indowments, (f) & surrenders. (g)

(e) Lit. 13.

(f) Br. Dower 7.

(g) 44. Aff. 3.

Livirie within the view, so we call An estate made within view of the land, bee it by delivirie of a Deed of feoffment within the view, or otherwise, is a good Livirie of seisin, if the other enter in the feoffors life time: else the land descendeth to the heire of the feoffor, and the feoffment shall never effect.

38. 6. 3. 11.

1. H. 8. Br. feoff. 70

CHAP. 5.

Of Aduowsons.

Aduowson is the interest of present tithing to a Church. 15. H. 7. 8.

And this also lieth in tenure. For a common person may giue it to hold of him. And the Writ of Right of Aduowson is, *Quod clamat tenere de se.*

CHAP. 6.

Of Seigniories.

Hitherto of Tenements.

Bare Hereditaments are those which are not holden, and concerne the land or persons.

Those that concerne the land, are extinguished or gon for ever when he that hath them hath also the possession of the Land that they concerne, in as high and continuing an estate as hee hath the hereditaments:

Otherwise they are but suspended or gon for the time.

34th Pl. 15.

As if the Lord purchase the Tenancie in fee, and though it bee to him and another, and that other suruiue For his estate is as high in the tenancie as it was in the seigniorie.

But if one that hath a rent charge in fee, grant it for life to the Tenant in fee of the land, or in fee to the Tenant for life, of the land, that is by a suspensio of the rent. And therefore (a) in the first case it may be with a remainder ouer, and (b) in the second the Tenant

(a) Abridgment of
Auses.
(b) Tark

Tenant may grant it in his life, & his heire shall haue it after his death. For the estate was not so high in the one as in the other.

So if a man that hath a rent charge in fee going out of land, entermarrie with a woman Tenant in fee of the land: or if the Tenant in fee offe his Lord vpon Condition. For there in the first case the husband may grant this rent, notwithstanding the entermarriage: and in the second case, if the tenant enter for the condition broken, the seigniorie is reuiued. For the estates are alike perdurable.

5.E.3.16.

Park. 196

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These are leniable by distresse, or such as cannot be distreyned for.

Distresse is a taking of chattels As (a) a Cart full of Corne, a fold (b) of Sheepe, &c. a (c) Mill stone, &c. if it bee not part of the Mill, though it bee fixed to a piece of timber with nailes, windowes, and dores, when they are remoued off from the hookes. But a Mill-stone, though it be lifted vp to be picked and beaten: yet so long as it lieth vpon the other stone, remaineth parcell of the mill, and cannot bee distraigned. No more can windows and dores hanging vpon the hookes, though they bee remouable, **found vpon the same land**, but in other land not holden of him, hee cannot distrein for his seigniorie except it be by the Tenants grant, **for satisfaction of arrerages** for dismes let reseruing a rent, cannot be distreyned for the rēt, not when they are

(a) 2.H.4.15.

(b) 20.E.4.3.

(c) 14.H.8.25.

9.H.6.9.

13.E.4.6.

11. H. 4. 40.

3. Mar. Pl. 154.

seuered from the ninth part, in as much as there is no distresse but vpon Land in Demesne, neither could a distres be taken vpon a Pistarie, but that it containeth land and demesnes.

Prerogative.

9. H. 6. 9.

13. E. 4. 6.

The King may distreine in another land of the same mans for his seigniorie or rent charge, but so shall not his Grauntee. 9. H. 6. 9. is, That a common person cannot distreyne for his seigniorie, but in the land holden of him, except it be by his Tenants grant. But the King may in any place, 13. E. 4. 6. is, That the King for his seruices or for a rent charge, may distreine in al his Tenants lands. But so shall not the Kings Grantee.

Statutes.

Marlb. cap. 15. Distresses shal not be taken in the High way or Common streete; but by the King or his Officers hauing speciall authoritie.

Artic Cler. ca. 9. Nor in the antient fees of Churches.

The distresse being put in pounce ouer it, or open pound; that is, some place where the owner may lawfully come at them, as if they be things that haue life, to giue them meate &c he that distraineth shall not be charged

9. E. 4. 1.

charged, what hurt soener they receiue. for quick Chattel must be put in pound ouert, that the owner may giue them sustenance: dead, neede not. But if they be marred in his default that distreyneth, he shal answer for them.

Statutes.

Marib. cap. 4. None shall leade distresse out of the Countie where they were taken. The neighbor that doth it to his neighbor, shall be fined. The Lord that doth it to his Tenant, shall be amerced.

1. & 2. Phil. & Mar. cap. 12. No distresse of Cattell shall be driuen out of that hundred, rape, wapentake, or lath, where it was taken: except to a pound ouert within the Shire, not aboue three miles from the place where it was taken. No distresse taken at one time shal be impounded at seuerall places, wherby the owners shal be constrained to sue seuerall repleuies, the paine of both these v. l. and treble damages. No person shal take aboue iiij. d. for the poundage for any whole distresse impounded: & where lesse hath beene vsed, there to take lesse, vpon paine of v. l. and losse of the money hee he hath taken aboue iiij. d. any prescription notwithstanding.

Ware hereditaments that may bee distained for, are a Seigniorie, & Rents charge.

Seigniories,

Seigniories are seruices wherby lands are holden.

Seruices are common to all certaine Estates, or proper to Inheritances.

Common, as fealtie, and rent seruice, whereof fealtie is incident to euerie such estate. For Lessee for life or yeares, shal do fealtie of common right.

But Tenant at will shal not, because he hath no sure estate. And therfore the seigniorie or tenancie being altered (whether by discent or grant) it must be done anew.

All other (both common and proper) grow by reseruatiō.

Fealtie is an oth to be faithfull to his Lord for the tenements.

Rent seruice is a rent to bee paid to the Lord at certain set times.

And to this place we may referre al seruices that lie in feulture. As to be ones butler, to couer his house, to scoure his ditches, &c. But a reseruatiō of things in prender or vsur, as to haue Cōmon for foure beeuies, or foure cart loads of wood, maketh no Tenure.

Of which kind, two among the rest are specially to be considered; that is to say, franke almoigne and diuine seruice.

Franke almoigne is, when a man of the Church holdeth freely in almes: For if an Abbot, tenant in Franke almoigne, alien to a secular man, he shal do fealty to the Lord, because a secular man cannot hold in frank almoigne. And the Tenant in this case

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Littlel. 29.

lit. 23.

lit. 19.

Park 127.

Littlel. 31.

7. E. 4. 10.

holdeth of the Donour, and is within his fee. For the Kings grantee of straies *infra feoda sua* shall haue them in lands holden of him in franke almoine. And the tenant shall haue against him a Writ of mesne, or *Ne iniuste vexes*. And if the Abbot tenant in franke Almoine, and all the monkes die, the lord shal haue the escheat; for the which he is bound to say prayers, & these prayers are the seruices. But because the prayers are not limited in certaine, hee neither shall doe fealtie, nor is subiect to distresse or Cessant, if they be not done.

The Lord must warrant such a tenant against himselfe and his heires, and saue him harmlesse of all manner of seruices against the Lords aboue, which wee call acquitaile.

7.E.2. cap. 79.
Lit. 32. for acquit.

Diuine seruice is a spiritual kind of seruice limited in certaine. As to distribute in almes to an hundred poore men, an hundred pence, &c.

Litt. 30.

These are the seruices whereby euerie certaine estate may be holden.

There followe those proper to Inheritances.

The grantee whereof shall hold of the grantor by such seruices as he holdethouer, if other seruices bee not reserved. As if there be Lord, and tenant by Knights seruice, and the tenant before the Statute of *Quia emptores terrarum* infeoffe a stranger of the Tenancie, without any thing reseruing: Now the feoffee and his heires shall hold

Park. 134.

hold of the feoffor & his heirs by Knights service.

Of the grantor may appoint him to hold of the next Lord. As if before the Statute of *Quia emptores terrarum*, there were Lord mesne and Tenant, and the tenant in feoffe a stranger to hold of the mesne, this is good, and the feoffee shall hold of the mesne by the same service that his feoffor held, and the feoffor cannot reserve new services, for to them the mesne is a stranger. But if the feoffment were to hold of the Lord paramount, that were void. So if the feoffment were to hold of any other stranger.

Statutes.

18 E. 1. Quia emptores terrarum. In all feoffments to one and his heirs, the feoffee shall hold his land of the chief Lord of the fees by the same services that the feoffor held before. If the feoffment be made of parcell he shall hold of the chief Lord *pro particula*, according to the quantitie of the land, & the feoffor set free for the part.

A mesne, that is, he that holdeth over if it be by no greater services than the tenant holdeth of him, we call it oueltie of services, whether they be the same as each of other by xx.s. or lesse as he by xx.s. and the tenant of him by xxx.s. must acquite the tenant of all manner of services against the lords paramount.

But Donors in franke-marriage cannot

not hold but by fealty. And therefore a gift in franke-marriage, rendring a rent, the reſeruation is void, for it is contrary to the nature of a franke-marriage, which is, to render nothing till the fourth degree be paſt. Some thinke the reſeruation good, and the franke-marriage thereby deſtroyed. But all agree, that the franck-marriage and the reſeruation cannot ſtand together. **And that of the Donor till the fourth degree be paſt.** And therefore a gift in frank-marriage, the remainder in tail to a ſtranger, is a good frank-marriage, for the reuerſion of the fee is in the donor, which maketh a tenure betweene them: otherwiſe it is, if the remainder were in fee. **Who muſt alſo acquit them of all manner of ſeruitices.** And therefore the Donors in frank-marriage may haue a Writ of Meſne.

4 H. 6. 22.

Old tenures, Fol. 7.

17. E. 1.

Little. 4.

12. H. 4. 5.

Prerogative.

One that holdeth of the King, as of his perſon, which is a tenure in chiefe. But if a Prince of Wales, before Statute of *Quia emptores terrarum*, make a feoffement to hold of his perſon, and after is made King, this is no tenure in chiefe, for a tenure in chiefe is the higheſt & moſt honourable ſeruitice in law, becauſe it is to the chiefe head of the body of the Realme, and therefore muſt be immediate vnto the King, & take his originall creation from the King himſelfe, not from a ſubiect. So to hold of the King,

30. H. 3. Dy. 44.

(a) 14. E. 3. 2
 r. p. 54.

King, as of his honour of Gloucester is no tenure in chief; for it is not of the Kings person, alienating the Freehold without licence, forfeiteth the Land.

Statutes.

Mag Chart. cap. 31. By a common Escheat. of a Baronie, &c. to the king, the Tenant shall not hold in chiefe.

1. E. 6. cap. 4. No more when a Seignorie commeth to the King by treason or dissolution.

1. E. 3. cap. 12. The King from henceforth shall not hold as forfeit such lands if they be alienated, but shall haue a fine for them in the Chancerie.

Services proper to estates of inheritances, are homage and suite of Court. For Tenant for life shall not doe nor take homage, but onely tenant in fee simple or in taile, in his owne or anothers right. As the husband for lands that he so holdeth in the right of his Wife, if he haue an issue by her, shall doe homage in her life time, but not after her death, if he holds himselfe in as Tenant by curtesie. Neither can a man at this day make a manor notwithstanding that he giue Land to many seuerally in taile, to hold of him by seruices & suite of Court, for he may make a tenure but not a Court, for a Court cannot

Let. 10.

23. H. 8. Br. com.
 Wife 31.

not bee but by continuance time out of mind.

Homage is an oth of fidelitie, acknow- *Lit. 12.*
ledging himselfe to bee the Lords man:
wherein the tenant must bee ungirt, uncon-
nered, kneele vpon both knees, and hold
both his hands together between the lords
hands sitting befoze him. This is to bee *Lit. 9.*
done onely to the Lord himselfe. But the
Lords Steward or Bailife may take fealtrie *Lit. ibid.*
for him, and but once during the Tenants *(a) Lit. 33.*
life. So as hauing done it once, he neither *b. 24. H. 8. Br.*
shall doe it againe to the heire of the Lord, *Br. fealtrie 3.*
or grantee of the seruices, nor to the same
Lord, if other lands doe afterwards dis-
cend to the Tenant that are holden by homage
of him. And though it bee in the Kings
case.

Prerogative.

The Kings Chamberlain shall take ho- *F. N. B. 256. v.*
mage for him.

Statutes.

33. H. 8. cap. 22. A fee set downe for re- *14 H 3 Stat. Hib.*
spiting of homage in the Exchequer or *foramt. ab. 11.*
other Courts.

When an inheritance descendeth to co-
parceners, the eldest onely shall doe ho-
mage,

Prerogative.

Prerogative.

But if they hold of the King, all of them must doe it.

Lit. 33.

18 H. 6. 2.

45 E. 3. 23.

11 H. 4. 52.

Lit. 33.

45 E. 3. 13.

Old tenures. Fol.
vlt.

When one and his Ancestors, whose heire he is, haue held by homage of a Lord and his Ancestors, whose heire the Lord is, time out of minde, and the Lord hath receiued homage, for the Alience of Tenant by homage ancestrell, holdeth not by homage ancestrell, nor shall haue warrantie from the Lord, because the continuance of the tenancie in the Tenant is discontinued. No more shall the Tenant himselfe by homage ancestrel, if he alien in fee, and afterwards take it backe againe. And if the Lord by homage auncestrell grant his seignorie, the Tenant neede not atturue, vnlesse the grauntee will warrant the land to the Tenant and his heires, for otherwise his warranty were lost, because by atturment the homage auncestrell is destroyed. **that bindeth him to warrant and acquit the Tenant.** And the tenant may haue a Writ of mesne. But if the Lord haue not receiued homage, he is not bound. Therefore such a one may compell the Lord to receiue his homage by a Writ *de homagio capiendo*.

Suit of court is a seruice by coming to the Lords Court. For suit of Court one shall bee distreyned and not amerced, which prooueth it to bee suit seruice. But for

for a suit reall (which is to come to the Leet) he shall be amerced and not distreined: yet a tenure to come to a leet or hundred, and to doe there some speciall service, as to be a Crier, &c. is a good service, but not sute service. And euerie sute service is intended to a Court Baron.

12.H.2.17:

d.21.E.4.351

Land in the Lords hands (whereof severall men hold by suit of Court) is termed a Mannor: the land considered apart from the service, is termed demesnes.

Statutes.

Marl.ca 9. None shall be distreined to doe suite of Court vnlesse he bee specially bound to it by his Charter of feoffement; except such as they or their ancestors were wont to doe it, fortie yeares before the making of this Statute, whether they were infeoffed by deed or without.

The eldest Coparcener shall onely doe suite of Court, and the other parceners contribute. And where there be many feoffees, the Lord shall haue but one suite, and the feoffees contribute.

The particular kinds of services (wherby lands of inheritance are distinguished) be Socage and Knights service: both draw vnto them certaine commodities to the Lord, partly in the tenants life, and partly after his death.

That in his life is a reasonable aide or portion towards the making of the Lords eldest Sonne a Knight; and

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towards

40.E.3.22.

towards the marryng of his eldest daughter. It is called *ayd pur faire firs Chivalier*, and *pur file marier*. And if the Lord confirm to his tenant to hold by fealtie and certain rent, releasing all other seruices and demands; yet hee shall haue reasonable aide, for it is incident to the seruices, and not released by those words.

Statutes.

Statute 1. cap. 31. Reasonable aide shall be twentie shillings for a whole Knights fee, and as much for xx. l. land in Socage: & so after the rate of more, more, and of lesse, lesse. The time of leuying it to make his sonne Knight, must be when he is fiftene yeares old; to marrie his daughter when she is seuen. If the father after the aid leuied die before he marrie his daughter; the fathers Executors shall bee charged to the daughter of so much as the father receiued, or his heire, if his goods be not sufficient.

25. E. 3. cap. 11. Reasonable aid to make the kings eldest son a knight, or to mary his eldest daughter, shall be leuied of all Land holden of the King, without mean, according to the rate in the former statute.

The other after his death are **Wardship**, and **reliefe**.

Fittegard 67.

Wardship is the custodie of the bodie & Land of the heire within age, which shall be till rittj. of a woman.

Reliefe

Reliefe is a portion to be paide by the heire to the Lord.

Socage is a tenure to be don out of war: *Lit. chap. of Socage.*

As if one hold by fealtie onely, or by fealty and certain rent, or by homage and fealty, or by homage, fealtie, and rent for all manner of seruices, or by escuage certaine, that is to say, by paying a certain summe of monie, as halfe a Marke, &c. and no more or lesse (howsoeuer the Parliament asseffe it) towards finding of a man for the war whē the King makes a voyage royall towards the Scots, &c. or by paying a certaine Rent for Castle-ward, &c.

Where the next of kinne, to whom the inheritance cannot discend, As if land descended of the part of the father, then the mother, or next cosine of the mothers side; if of the part of the mother, then the father, or next friend of the fathers side **shall haue the heires wardship till full age to the heires owne vse.** And therefore must render an account to the heire at his full age, of the issues and profits of his lands, & of the value of his marriage, if he marrie him within fourteene yeares of age. And if he die before the heires age of fourteene, yet his executor shall not haue the Wardship; no more shall the husband after the death of his wife, Gardian in Socage. But if the wife be Gardian in Socage, and the husband (or they both by indenture) let the land; yet the wife after her husbands death may enter: for in as much as she hath it onely in

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the

the right, and to the vse and benefit of the Infant, the ordering and directing of this land shall not be taken from her by any act of her husband.

Statutes.

Statute cap. 17. Guardian in Socage may not do wast, exile, nor distruction, nor giue nor sell the marriage but to the commoditie of the heire.

Little. ibid.

Here for reliefe the Lord shall haue presently so much as one yeares rent amounts vnto. As if the tenant hold of the Lord by Fealtie, and x. s. rent payable at certaine termes of the yeare (as halfe yearly or quarterly) then the Tenant shall pay vnto the Lord x. s. for reliefe ouer and aboue the x. s. that he shall pay for the rent, and that by & by, without tarrying till the day of payment of his rent, & of what age soeuer that the heire be.

Prerogative.

Tenure by Socage in chiefe giueth the King primer seisin, or the value of that lān by a pere, if the heire be of the age of xiiij at his ancestors death: therefore there the heire shall be driuen to sue his liuerie, but not if he be vnder xiiij, at the death of his ancestor. And if being vnder xiiij he sue his liuerie, it shall be *una cum exhibibus*; but not if hee sue it at xiiij. If one hold of the Kings person to doe something concerning war, but not

31. H. 3. Br. Liue-
rie & ouster le
maine 60.
Stamf. prer.
c. 35. H. 6. 52.
F. N. B. 250.

not to be performed by the person of a mā,
as to giue him yearly a bow, sword, dag-
ger, &c. it is called pettie Sergeantie, and is
but a tenure in Socage.

Knights Service is a service touching *Lit. chap. of knight-*
war to be don by the body of a man. As if *service.*

one hold by Escuage vncertaine, that is to
say, by being himself or some other for him
with the King 40 dayes well and conveni-
ently arrayed for the warre (if he hold by a
whole knights fee, or 20 dayes if hee hold
by the moiety of a knights fee, & so by pro-
portion) whensoever the King maketh a
voyage royal into Scotland, &c. else to pay
so much mony as shall be assessed by parli-
ament. Or if a man hold of any Lord to
keepe his Castle in time of warre (which is
called Castle-gard) or to blow a Horne in
time of inuasion by enemies, which is cal-
led Cornage.

F.N.B. 83. a.

To all knights service homage is inci-
dent, but not vnto Socage. Here the Lord-
ship is the (a) **Lords** (b) **to his own vse,**
Therefore his executors shal haue the ward
during the heires nonage (c) **& that til xxj of**
an heire male. And therefore if the lord ma-
rie a male that is his ward, before 21. yet he
shal be in ward for the land til that age.

7.E.4.28.

(a) Little, 22.

(b) Lit. 72.

(c) Br. gard 1117

Statutes.

Mag chart. ca. 3. The lord shal take Ho-
mage of the heire before he haue wardship.

Marl c. 6. If one infeoffe his heirs within
age to cause the lord to lose his Wardship,
& die, yet the lord shal haue the wardship.

L 3

So

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So when a fraudulent feoffement is made by a Tenant, vpon condition to reuerse, after certaine yeares, to him or his heires, if the feoffees pay not a certaine summe, to the value, or more than the value of the Land. In this case the Lord shall haue a Writ, *de custodia reddenda*; and if (being able to auerre this matter) hee recouer, yet the feoffees shall haue the Land againe, when the heires come to age. The Lord not being able to auerre this, shall render the feoffees their costs and damages.

32. H. 8. Cap. 1. Two Iointenants or more, and the heires of one holding of the King, and he that see dieth, the King shall presently haue the wardship and marriage of the body of his heire, if hee be within age. Sauing to euery woman her dower of two parts of those lands, deuided from the third part, as aboue said, and not otherwise, and sauing to the King during the Wards minority, the reuersion of such Iointenants, and Tenants in dower.

Magna Chart. Cap. 3. The heire being made Knight within age, yet the land shall remaine in the Lords custodie to the end of the tearme.

(a) 2 H. 7. 6.

(b) 4 H. 3. dower.

174.
(c) 11 H. 3. dower
137.

The wife shall be barded of her dower, both dower (a) at the Common law, and dower (b) *ex assensu patris*, or, (c) *ad ostium ecclesie*, so long as she deteinethe the heire from

from him. But in pleading she must shew the heires name, and whether it be male or female.

2 H. 7. 6.

wardship of the bodie giueth the wards marriage to the Lord, as a thing of meere right, pertaining to him. And that whether he will be married by the Lord or not.

2 H. 7. 9.

Statutes.

Merton. Cap. 7. The Lord marrying the heire within foureteene yeares of age, in such sort as he be disparaged, shall loose the custodie and whole commodity of the wardship, if the Wards friends complaine of it.

The heire full of age shall satisfie his lord for the value of his marriage, as much as any man would giue, before hee receiue his land.

Merton. Cap. 6. An heire, after foureteene yeares of age, marrying himselfe without the Lords licence (who tendreth to him a couenable marriage) the lord shall hold the land, after the heires full age of one and twentie years, so long till he may receiue the double value of the marriage.

Westm. 1. Cap. 22. The Lord may hold the land of heirs females, two yeares after their age of 14. within which two years, if he marry them not, they shall goe

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quite

quite, without giuing any thing for the Wardship or marriage. And if they wil not accept a couenable mariage tendred by the lord, he shall hold the land til xxj and ouer, till hee haue taken the value of the marriage.

4. 8. 5. Phil. & Mar. cap. 18. A woman aboue xij, & vnder xvj, agreeing to a person that contracteth matrimony with her contrarie to the form of the stat. (which see fo.

) the next of her kinne to whom the Inheritance should come after her death, shal from the time of such assent, haue all the lands, &c. which he had at the time in possession, reuersion, or remainder during her life.

F. N. B. 142.

If one hold sundrie Lands of diuers Lords, the wardship of bodie goeth to the Lord of that land which the Tenant held first. Who is called a Lord by prioritie, and the other by posteriority. And it is the feoffment of the land which maketh the prioritie: for the pleading is, That hee holdeth this land of him *per antiquius feoffamentū*, then he holdeth the other lād of the other. Therefore if the Tenant of Lands holden by prioritie, maketh a feoffment in fee, and take an estate backe againe in fee, this land shall bee holden by posterioritie. But if the lord by prioritie grant his seigniorie in fee, yet the tenure shall bee of the grantee by prioritie. So though the grantor

for take an estate of the Seigniori backe againe in fee.

Prerogative.

The King shal haue the wardship of bo: 12.E.3.prer.23.
die, though the tenure of him be by poste-
rioritie. But his Grantee of the Seigniori
shal not.

The eldest child (a) whether son or daugh- (a) 33 H.6 55.
ter, being heire apparent to the father, shal
not be in ward for his bodie during his fa-
thers life. But if one hauing a sonne, take F.N.B. 143.l.
a wife seised of Knights seruice, and hath
another sonne by her, and after the wife di-
eth: this second sonne shall be in ward du-
ring his fathers life, vnlesse the husband be
intituled to be tenant by curtesie.

Prerogative.

Tenure by Knights seruice in chiefe, gi-
ueth to the King the wardship of all other
lands also. And further, (a) primer seisin,
or the value of them all by (b) halfe a yere
(if the heire were in ward) by a whole yere
(if he were not) (c) which primer seisine
must be paid, and reliefe also.

Stamf prer. 1. The
stat. of prer. c. 1. 16.
in this poynt but a
declaration of the
Common Law.
(a) 33. H. 8. Br. la-
uerie ouster la maine
66.

(b) Stam prer. 14.
(c) Br. Relief. 12.

Reliefe for land holden by Knights ser-
uice, amounteth to an $\text{C. } \text{ss}$ for a whole
Knights fee, to a C. marks for a Barone;
and

and to an C. pounds for an Earledome.
Mag. Chart. cap. 12. calleth this old Reliefe, & according to the old custome of the fees, which proueth that statute to be but an affirmance of the Common Law.

Old Nat. Bremper
Br. Relief. 13.

24 E. 3. 24.

If the heire be within age at the Tenants death, no reliefe shall be paid to the lordes that are to haue the wardship. And if one hold of severall common persons by Knights service, the Lords by posterioritie shall haue no reliefe, because they are to haue the Wardship of the Land holden of them, though the Lord by prioritie onely haue the wardship of the bodie. But if in that case there bee any Land holden by Knights-service in chiefe., the heire at his full age shal pay reliefe to the other lords. For there the King hath the Wardship of all his lands.

Prerogative.

a. 33. H. 8. Dy. 44.

Liv. 34.

b. 11. H. 4. 72.
Liv. 36.

Grand Sergeantie, that is to say, Tenure of the Kings person, for euerie grand Sericantie is a tenure in chief, being of none but of the King, to doe vnto him a more speciall service whatsoeuer by the person of a man, as to beare his banner or Lance, to lead his horse, to carrie the sword before him at his coronation, to be his sewer, butler, or caruer, to be one of the chamberlains of the receits of the Exchequer, or to finde a man to war for him whersoever within the foure Seas, for if he can find none to do the service for him, he must doe it himselfe, is a speciall

Special knights service in chiefe, where the
king in stead of reliefe, shal have the value
of the Land by a yeare.

(d) Lit. 35.
11. H. 4 72.

CHAP. 7.

Of Rent-charge.

Lit. 48.

Rent charge is a rent with libertie
to distraine. As when a man seised
of land granteth by a Deede Polle,
or by Indenture, a yearely rent go-
ing out of the same Land to ano-
ther in fee or in fee taile, or for terme of life
&c. with clause of distresse: or maketh a
feoffment in fee by Indenture, reserving to
himselfe a certaine yearly rent, with clause
of distresse.

CHAP. 8.

Of Rent Secke.

Bere hereditaments concerning land
(for which no distresse can be taken)
are a Rent secke and common.

A Rent Secke is a Rent with-
out libertie to distrepne. As where
a Rent is so granted or reserved as before,
without clause of distresse.

Lit. 48.

When a Rent is granted for equalitie
of partion among Coparceners, As vpon
two

two houses, one worth xx. s. a yeare, the other worth x. s. allotted one to the one coparcener, the other to the other; & that coparcener that hath the house worth xx. s. a yeare, to pay v. s. yearly to the other, ~~this~~ rent may be distrained for though no such libertie be granted.

The grant of a feignorie, rent charge, & rent seck, as also of the remainder or reversion of any of these, or of the land it selfe, is nothing worth without Attornement, that is to say, the agreement of the tenant that presently must be charged. As Lord, mesne, and tenant; the Lord grants his feignory, the Mesne must attorne, and not the tenant parauaile: for the Mesne is Tenant to the Lord, Lord, and Tenant, the Tenant letteth the Land for life, or giueth in Taile, sauving the reversion to himselfe: now if the Lord grant his feignorie, he in the reversion must returne to the grantee, & not the tenant for life or in taile: for he in the reversion is tenant to the Lord, and not the other. But if the Tenant had let his land to one for life, the remainder in fee, there vpon a grant of the feignorie, the Tenaunt for life must attorne; for he is tenant to the Lord. So is not he in the remainder, whilst Tenant for terme of life liueth. If lands be let for yeares, or giuen in taile, sauving the reversion: Vpon a Graunt of the reversion, the Tenant of the land must attorne. And an Attornement may either be by words, as to say, I agree or am content

Lit. ch. attorners.

tent with the Grant; or I attorne to you, & become your Tenant by force of the grant: or else by deliuering to the grantee, a penie, halfe penie, or farthing in name of Attornment; or by any other matter implying an agreement, as a surrender to the grantee of the reuersion, praying in aide of him, &c. And if such attornment be not to the grantee in the life of the grantor, the Graunt is meere void.

In the grant of a reuersion depending vpon a Freehold, the Attornment of the Freeholder is sufficient, though hee be not the tenant that presently must bee charged. As if lands be let to a man for yeres, the remainder to another for life, and he in the reuersion grant his reuersion to another; the Attornment of him in the remainder is sufficient.

Liv. 128.

CHAP. 9.

Of Common.

Common is a profit to bee taken in anothers land. As (a) feeding his beasts, &c. And if a man giue to I. S. in frankmariage with his daughter, Common for all his beasts, or other mens (if hee should haue none of his own) to doe his businesse yearly, & to feed with the beasts of the grator where they should goe: there if the grauntor come afterwards

(a) 9. H. 6. 35.

2 E. 2. dower 123.

Ibid. 2. E. 2.

to haue no beasts, yet the Grantee shall haue his common. But if the graunt bee wheresoeuer the beasts of the graunto go, &c. there the grantee shall not haue common, but when the others beasts are in common. Also vpon a grant of common throughout a mannor, yet hee shall not common in gardein, or land sowed, &c. nor take his common with beasts that are not commonable, as hogs, &c.

So of a common of estouers, that is to say, taking of reasonable house-boote, and hay-boote, &c. And such manner of profits (though they be appendant to the freehold) cannot be parted. For if such an heritage discend to parceners, one shall haue the whole profits, and the other Sisters an allowance. And the wife for her dower shall haue but an allowance onely.

Statutes.

Merton Cap. 4. The Lord of wast woods and pastures, may approoue against his Tenant, if he leaue sufficient common and pasture to his Tenant, with egressse and regresse according to his land.

Westm. 2. Cap. 46. Such a Lord may approoue in like sort against his neighbours which haue common appurtenante, and for his Winde-mill; necessarie increase of Court, or Court-lodge.

Hithet

Whether belongeth chemin, or way ouer ones land from one certaine place to another, whether from close to close, or from his house, or the kings high street, or church, and other Hereditaments of like nature.

CHAP. IO.

Of Villeines.

BAre hereditaments that concern the person, or meerly of the persons themselves, or by reason of the person.

Of the first sort are villeines. **B**

Villeine is such a servant as himselfe, and whatsoener he possesseth, Land, rent, &c. but not things in action, as an obligation, debt, couenant, or warranty made vnto him, is the Lords (a) if hee claime it. (a) 3 H. 4. 15. But the wife which the villein marrieth after his purchase of land, & before the Lord enter, shall be indowed. And if he make a feoffment before the Lord enter, the feoffee shall retaine it, and his Executors shall haue the goods not claimed by the lords in his life time. 22. Aff. pl. 37. 19. E. 3. Dow. 171.

Statutes.

19. H. 7. cap. 15. Vpon a feoffement made to the vse of a villeine, the Lord may enter into the land it selfe.

Prerogative.

Prerogative.

37. Aff. pl. 49.

The Lord cannot seise his villein in the Kings presence.

18 E. 4. 30.

b. 18 E. 4. *ibid.*

19 H. 6. 3.

The children of a Villeine are also Villeines. And if one confesse himselfe a Villeine in Court of Record, the issue hee had before are frank: but those born (b) after are villeines.

41. E. 3. villen 6.

Villinage beginneth by confessing a mans selfe to be one in a Court of Record. And therefore in a *Præcipe quod reddat*, if the Tenant say that he is Villeine to I. S. & holds the land in Villinage, the demandant saith he is franke, &c. and he is found frank by the Iurie: yet he remaineth a Villein to I. S.

11. H. 7. 13.

Littles. 45.

A Villeine is set free, we call it manumission or infranchisement, when the lord enableth him to possesse any thing against himselfe. As by granting him an annuity, making an obligation or lease for yeres vnto him, or a feofment of any lands by deed, or without: & whether it be in fee simple, fee taile, or for life. But to make a lease at will vnto him, is no infranchisement: for he hath no certaintie of his estate, seeing the Lord may put him out when he will.

Statutes.

9 Ric. 2. cap. 2. In a suite by the Villeine against his lord, the lords shall not be barred

red of their villeins, because of their answer
in Law.

CHAP. II.

Of Annuities.

Those by reason of the person, are
Annuities, and Tenements, or Of-
fice.

Annuity is a yearly rent to be Lit. 48.
had of the person of the Grantor.

As upon an annuity granted, or a rent out
of his coffers, or a rent out of land, with-
out saying more. But if the Deed be, That
if A. be not yearly paid x. s. at Easter; hee
may distreine for it in the Mannour of D.
This is a Rent-charge (for the Mannor of
D. is charged with a distresse) but no annu-
ity: nor the person of the Grantor charged
because he granteth not any rent, but gran-
teth onely that he may distreine. So if by
expresse words he insert in the Deed of the
grant of a Rent-charge, *Promiso quod non ex-
tendat ad onerandam personam meam per bre-
ue de annuitate, &c.*

M

CHAP.

CHAP. 12.

Of Corrodie.

a. 25. Aff. pl. 7.
b. 31. H. 6. 16.
Aff. 16.

Corrodie is a partition for ones sustenance. Be it bread, ale, herring, a yearly robe, or summe of money for the robe. So of a chamber and stable for my horses, when the same is coupled with other things, as with a certaine messes of flesh, bread, ale, &c. But a chamber and stable themselves are not any Corrodie. And in the first case they shall passe without liuerie and seisin, but not in the other.

CHAP. 13.

Of office.

5. E. 4. Rep. 66.
per Br. office 48.

Office is a dutie of attendance by on a charge. And therefore the grant of an office to an ignorant man that hath vtterly no skill at all, is meerely voyd. As if the king by his letters Patents make a Clark of the Crowne in the Kings Bench, which was neuer exercised in the Office, nor in any other Officethere, & so vtterly insufficient to serue the King and his people, the grant is voyd, and the Iustices may refuse him. So

is the presentment of an vnlearned man to a Church, meerely void. Likewise the *Non feaſance* and the not attendance vpon an office, hath a Condition in Law annexed to it. As if the Marshall suffer but one voluntarily to escape of the prisoners, it is a forfeiture. But in negligent escapes what shall make a forfeiture of the office, and what not, both for the number of negligent escapes, and for the greatnesse and smalnes of them (as if some that escape were committed vnto him for surety of peace, & were suspicious men) lieth wholly in the discretion of the Court: & the King may himself haue an office: as a forestship grated to one in taile, the remainder to the King, and his heires is good: for although he cannot in respect of the Maiestie of his person, exercise the office himselfe; yet he may grant it ouer to one that may exercise it.

39.H.6.31.

1.H.7.29.

Statutes.

§.C.6.cap.16. The office or deputation of any office, or any part thereof which concerneth the administration or execution of Iustice, or the receite, controullment, or payment of the Kings monie, &c. or suertie of the Kings lands or customes, or any administration of necessarie attendance in the Kings Custome-house, or the keeping of the Kings places of strength, or the Clerkship of any Court of Record, shall not be bargained & sould, or any reward or agreement

ment of reward taken for it, vpon pain, that the seller, &c. shall forfeit all his interest in the office or deputation, &c. And the buyer be a disabled person, to occupie or inioy the same: And all bonds, &c. to bee voide, as against him by whom they are made. Provided, That all Acts executed by any person offending before he be remooued from his office, &c. shall remaine good.

This Statute extendeth not to any office of inheritance, nor to any Parkership, nor to any offices to be giuen by the chiefe Iustices of the Kings bench, or Cōmon place, or by any Iustices of Assise.

 CHAP. 14.

Of Franchises.

BESIDE the Hereditaments already handled (a) there be certaine other deriued from the Kings Prerogative, which are termed *Franchises*. For all Franchises are deriued from the Crowne: and therefore are extinguished if they come to the Crown againe, by escheat, forfeiture, &c. For the greater drownes the lesse.

A franchise is a royall priuiledge in the hands of a common person: so we call every subiect: and is forfeited by misusing of it. As keeping Faire or market vpon Monday when Wednesday is granted him: or keeping

(a) 15 E. 4. 7.
4 E. 1. 219.
6 E. 3 per 30 H. 8.
D. 44.

32 Aff. 134.

ping Faire vpon two daies when hee hath but one granted : for that is a misuser. (But keeping market vpon a Monday and Wednesday, when only Wednesday is granted, is a forfeiture but of that which he vsurpes more than is granted) Claiming a faire, &c. for two dayes by Patent, when onely one is granted, is a forfeiture of both. But if he claime one by Patent, and another by Prescription, & this latter found against him; yet he forfeiteth but that day onely. Misusing of any point, where there be many in one Franchise, is a forfeiture of them all. But not where the Franchises are seuerall. But *non user* of a market, &c. is no forfeiture of it, as it is of the office of the Clarke of a Market, and such like, which of necessitie must be vsed.

2 H. 7. 11.

22. Affidid.

2. H. 7. 11.

Statutes.

27. H. 8. cap. 24. No subiect shall haue authoritie to pardon any felonie, or any Accessories to felonie, or any outlawrie for such offences. Nor to make any Iustices of Eyre, A life, Peace, Gaole-deliverie. All originall Writs, inditements of Treason, Felonie, and Trespasse, and Processe vpon the same, shall be onely in the Kings name. And the *Tesse* in his name that hath the Franchise.

Euerie Writ and Enditement whereby a thing is supposed to be done against the Peace, shall be supposed to be done against

the Kings peace onely, and not against the peace of any subiect.

The King shall haue all fines, issues, amerciaments, & forfeitures lost by any Officers of Franchises for *non* execution, or insufficient retournes of proccesse, or for any misdemeanor concerning their office, with many prouisoies in the same statute.

The kinds of franchises are diuers, & almost infinite.

Of such sort are the libertie of hauing a Court of ones owne; of drawing causes out of the Kings Court into his owne. In the first case we call it *teneré placita*, when hee is to hold it before his bailif in such a place, and therein a man may prescribe. (In the other case we call it *conissance of plea* : and that lieth not in prescription but in demād, and is alwayes of Record) of returning Writs, &c. Also *Warrens* which a man may haue in anothers land, as well by the Kings grant, as by Prescription. And if the King grant to one Warren in his land, and afterwards the grantee alien the land, reseruing the franchise. **Markets**, (a) *fayres*, tolle (b) of euerie buyer for things he buyeth there, not (c) being for his owne expences, For (d) neither shall the seller pay toll, but the buyer: neither shall a man pay toll for the things he bringeth to the Faire, but for the things he selleth. But by custom he may for euerie thing brought to the Faire, & for his standing also. and whatsoener liberties & commodities else that (created first by

9.H.7.11.

35.H.2.32.

(a) 2.H.7.11.

22.Aff.pl.34.

(b) 9.H.6.45.

(c) 28.Aff.pl.53.

(d) 9.H.6.45.

by the kings special grant, or of their own nature belonging to him) are giue to comō persons to haue any manner of estate in.

CHAP. 15.

of Chattells: where, of Testaments.

Such thē is the nature of an hereditament in his sundrie sortz and kinds. Chattells are possessions wherein there cannot be seuerall estates.

All ones owne Chattells real, as (a) a Lease for yeares, &c. and personall, as corn (b) growing vpon land, but not trees, for they are parcell of the Freehold, &c. Whether in possession, or that any is indebted to him in, but not those he is onely to recouer damnrages for, as in goods taken from him, or to bee accounted for. (c) Neither could the Executor at the Common Law haue an action of account or trespassse *De bonis asportatis in vita testatoris*, may bee giuen away or deuised by his Testament. otherwise called his last Will: & the things deuised are Legacies. (a) 20.E. 4.9. (b) Park. 99. (c) 7.El. Pl. 290.

Testament is an appointment of some person, whom we call an executor, to administer them for him after his death. For without naming Executors, or if they all refuse it, it is no Will at all: yet the legacies shall be paid in both cases, and the Testament annexed to the Letters of Admini-

37.H.8.B.198.20.

3 H. 6. 7.

(a) 19. El. Pl. 315

(b) 17. H. 8. 22.

21. H. 7. 29.

10. E. 4. 1.

Littles. 41.

(a) 31 H. 6. 30.

(b) 42 E. 3. 13.

(c) 48. E. 3. 14.

(d) 12. E. 3. Quid
inruclamat.(e) Till the Statute
9 E. 3. cap. 3.

36. H. 6. 17.

32. H. 8. B. ex. 155

stration. But is a good will of land though no Executor be named : for land is not Testamentarie. And Administration is it which makes an Executorship : That if one make three Executors, and will that none shall administer but onely one ; this one is sole Executor. Also this Administration is for the Testator and his use, so as the Executors themselves cannot make their Will (a) of these goods, nor (b) partition between them, &c. nor the husband which marieth a wife that is an Executor, shall haue those goods by intermarriage with her : neither shall the Executors forfeit them by outlawrie. Therefore Executors represent the person of the Testator. So as a villeine Executor may haue an Action of Debt against his Lord, for debt due to the Testator. And outlarie Excommungement, &c. is no dishablement to bring an action as Executor. And all of them are but one person: whereupon it is, That the release or Attornment of one is good for both: that in an Action brought against them, as debt, couenant, and such like ; one cannot answer without the other by course of the Common Law: and that they cannot haue euerie one by himselfe, a feueral plea in abatement of the Writ, &c.

Yet their power, both for the time when, and the things which they shall administer, may well enough be diuided. As a man may make A. & B. his executors, & that A. shall not entermeddle during the life of B.

or

or make one his Executor touching his goods in D. and another his Executor touching his goods in S.

Statutes.

32. H. 8. cap 1. He that hath Lands, Tenements, or hereditaments in Soccage, and none holden by Knight-service, or Soccage in chiefe, may deuise all by his Will in writing, or giue all by an Act executed in his life. So may he that hath land holden by Soccage in chief, & other holden of a common person by Soccage, & none holden by Knight service: sauing to the king, *primer seisin*, releife, suing of the same out of the Kings hands; fines for alienation, &c. & al other duties for the Soccage in chief, as before hath beene accustomed.

He that hath land, &c. holden by Knight service (whether he haue other lands holden of the King, or of any other person, by Knight service, or otherwise, or not) may doe the like for two parts in three to be diuided in certaintie, for the aduancement of his wife, children, and payment of his debts. Sauing to the King the Wardship, or *primer seisin*, of the third part, without any charge, dower, &c. and fines for alienation.

He that hath lands, &c. holden by knight service (whether of the King alone by a Knight Service not in chiefe, or of a Common person, or some holden of the King

King, some of a common person) and other lands in Soccage, may deuise by Will, or giue by any Act executed in his life, two parts of that holden by knight seruice, and all the Soccage: Sauing to the Lord of the land holden by Knight Seruice, the Wardship of a full third part thereof, without any charge, dower, &c.

Provided, That euerie one shal sue his liuerie, reliefe, and heriot, as if this Act had neuer been made.

34 *H. 8. cap. 5.* The former Statute shall be extended to inhable deuises or other acts onely of lands in fee simple.

And if the partie that maketh the Will or other Act, be seised in Coparcenarie, or in Common, it shal be good for so much as in himselfe of right is.

The wardship, reliefe, primer seisin, &c. shall be of lands that disceind immediately after the death of him that maketh the wil or other act, as well in fee-taile as in Fee-simple: and the deuise of two parts residue shall be good, though it be of all his fee simple lands. Such a will shal be good for two parts (in case onely where two may be deuised) though it made for the whole, or more than two parts.

Such Wils made by any woman couert, or person within xxi yeares of age, Ideot, or *non sane memorie*, shall not be good.

And so some other things there, for the explanation of the former statute.

W. L. M.

Westm 2. cap. 23. Executors from henceforth shal have a Writ of account, and like action and processe in the same Writ, as their Testator should if he had liued.

4 E. 3. cap. 7. Executors shall haue an Action for a trespassse done to their Testator: as of his goods and Chattels carried away in his life, and recouer their dammages in like manner as he whose executor he is should haue done if he had liued,

The Executors must proue (a) or make probate of the Will (to be a true one) in the Spirituall Court, and be (b) sworne to see it performed. (a) 2 I. E. 4. 24. (b) 21. E. 1. Pl. 544

If many Executors be made, and one refuse; yet he may administer at his pleasure, and the other must name him in euerie Action for any dutie due vnto the Testator, and his release shall be a barre of the whole dutie. And if he suruiue the other Executor, he shall haue the action, and not the Executor of him that died. 21. E. 4. 23.

Otherwise it is if they al refuse, for there the Testator dieth intestate. 36. H. 6. 9.

But an Executor once administering, As if he sell land in vse, appoints by the wil to be sould, and the mony to be disposed, &c. can neuer refuse after. 9. E. 4. 47.

Executors must answer all certain duties of the Testators, But not for (a) a trespassse done by him, burning of a Writing bailed vnto him by Deede indented; receipt, (a) 11. H. 4. 46.

(1) F. N. B. 117.
2. H. 6. 12.

11. H. 7. 12.

21. E. 4. 21.

(4) 20. E. 4. 9.
(6) 2. E. 4. 39.
37. H. 6. 30.

20. El. Pl. 519.

21. El. Pl. 539.

37 H. 6. 30. & per
20. El. Pl. 521.

13. H. 7. 13.

receit (c) of rents, or occupation of other mens lands, as Bailife, having sufficient of his Chattels which we call assers entermaines, to doe it. And therefore shall bee charged of their owne goods, if they waste the Testators.

But so, as duties that grow by specialtie are to be answered before other duties, and legacies to be last of al deliuered: without which deliuerie, the deuisee can neither enter (d) into a Terme, nor take (e) a chattell personall deuised to him. But vpon a lease deuised for xx. yeares to one for the first x. yeares, the remainder or remnant of the terme to another: or deuised to one for so many yeares as he shall liue, the remainder to another: a deliuerie to the first Deuisee serueth for him in the remainder also. So, though it be but the occupation of a terme, which is so deuised: for the occupatiō and profits of the land is all one with land it selfe. But if the occupation of a Booke, glasse, or other Chattell personall bee deuised to one for life; and after his death, to another in like sort: there a deliuerie to the first is no deliuerie to the other; for their occupations are seuerall, and in such Chattels personall, the occupation is distinct from the propertie.

In these deuises the Testators intent (standing with the rules of Law) shall be taken. As where a man deuiseeth Lands (deuisable by Custome) to his sonne and heire

heire after his wiues death, the wife hath an estate during her life, by implication, in the intent of the deuise. A deuise to one and his heires males, is an estate taile. But a deuise to I. S. in fee, vpon condition, if he pay not to I. D. a certaine summe of monie, then I. D. to haue it in fee; is a voyde Condition and remainder, for it is contrarie to Law. But a deuise of the Fee-simple to Alice S. and after her death to B. is only an estate for life, the remainder for life to B the remainder to Alice in fee. So as the husband of Alice (if she die in the life of B) cannot be Tenant by Curtesie.

27. H. 8. 27.

29. H. 8. Dy. 31.

19. El. Dy. 357.

The Executor of an Executor, is Executor to the first Testator, and may haue an Action of Debt for the arrerages of an Annuitic due vnto him.

10. E. 3. Ex. 110.

Statutes.

25. E. 3. Cap. 5. Statut. 4. Executors of Executors shall haue Actions of Debt, Account, and of goods carried away of the first Testators: and execution of Statute merchants, and Recognisances made vnto him.

If no will be made, the Ordinary shall administer al the chattels that were in his possessions. For he which had the charge of his Soule in his life, is presumed the fittest person to haue the care of disposing his goods in *pior vsus* after his death.

7. El. Th. 377.

death. And therefore the Ordinarie may seise the goods and must keepe them without waisting, & may giue, alien, or sel them at his wil, and dispose the monie comming therof *ad pios vsus*. And if he doe not so he breaketh the confidence which the law repositeth in him. But yet this gift or alienation remaineth good by law. Howbeit being a spirituall gouernor he shall not be subiect to temporall suits, nor haue any Actiō of debt or otherwise for any thing due to or by the intestate.

Statutes.

Westm 2. cap. 19. The Ordinarie shall answer for debts wherein the Intestate was bound, as Executors should.

31. E. 3. cap. 11. The Ordinaries shall depute next friends of the intestate to administer his goods, who shal sue and be sued, and be accountable to the Ordinarie, as Executors should.

21. H. 8. cap. 5. Administration shall be committed to the widdow of the Intestate or to the next of his blood, or to both, at the discretion of the Ordinarie. Where diuers persons next of the blood (which in deede are in equality of degree with the intestate) claim administratiō, or wher one only claimeth it as next of the blood (where in truth diuers are in equalitie of kindred, as aforesaid)

said) the Ordinarie shal be at his choice to accept one or more, making request. Where but one or more, and not all (being in equality of kindred) make request, the Ordinarie shal be at libertie to admit the widdow, and him or those onely making request, or any one of them, at his pleasure. The Ordinarie shal commit administration according to the rule aforesaid, vpon paine of ten pound.

The Statute **Magna Chart. Cap. 18.** is, That the Kings debts shall be leuied of the dead mans goods, and the surplusage deliuered to the Executors *Saluis pueris, & uxori rationabilibus partibus*, which proueth that this *rationabile parte* was at the Common law.

But (a) whether any will be made of his wife, and such children as are not advanced by him in his life (as if a daughter be couenably married by him, this is a sufficient advancement) shall haue a part to their owne vse; that is to say, one third of all (after his debts payd) to his wife, and the other to his children. And a Writ *de rationabili parte bonorum* is giuen to recouer it.

(a) *Magn. Charta cap. 28. 16. &c. v9 in F.N.B. 122. l. 4 Dr. ration part. 6. (b) 3. E. 3. det. 156*

CHAP. 16.

of Chattels reall.

Chattels, are Reall, or Personall.
Reall; as termes for yeares, and
wardships, whereof wee have spo-
ken before.

CHAP. 17.

of Chattels Personall.

Personall as Plate, Jewels, Sil-
uer, Gold, Implements of household,
Cattell, and all goods and moones-
bles whatsoeuer, Corne sowne by-
on the ground &c. For that is deuisi-
ble by will, shall be forfeited in outlary of
Debt or Trespasse.

The ownership of a chattell personall,
is termed a propertie, which of wild beasts
both Fowles of the Aire, Fishes in the Sea,
Beasts vpon the Earth, and generally all
Fowle of Warrein, Feasants, Patridges,
Deere, Conies, Hares, and such like can
not be in any, and therefore it is no felony
to steale them: and a writ of Trespasse
shall be *Quare warrenam suam intravit &*
mille lepores cepit, without saying *suos*, *Pro*
after they are made tame, longer than they
remain

Park, 99. 5. H. 7.
10.

3. H. 6. 55. 12.
H. 8. 3. 18. H. 8. 2
For sole of War-
rens.

12 H. 8. 3. 18 H.
8. 2. 3 H. 6. 55.

remain in ones possession. As my tame Hound that followeth me, and is with my seruant; my Hawk that is flying at a foule; my Deere that is chased out of my Parke or Forest, and the Forester maketh fresh suit: these all remain in my possession, and the propertie is in me: but if they straie, it is lawfull for any man to take them. Otherwise it is of Hens, Capons, Geese, Duckes, Peacocks, &c.

12.H.8.3.

12.H.8.11.

12.H.8.3. & 11.

18.H.8.2

Prerogative.

Treasure hid in (a) the earth, not vpon the Earth, nor in the Sea, and (b) coyne though not hidden, being found (c) is the Kings: we call it Treasure-troue.

(a) Stat. 10.

(b) 27 Aff. pl. 19.

(c) 10. El. Pl. 322

Cattell also that stray into anothers land are the Kings after a yere and a day, if being proclaimed at the Market in two seuerall towne next adioyning the owner doe not claime them. For if a Lord keep a stray three quarters of a yere, and yet within the yere it strayeth againe, and another Lord getteth it, the first Lord cannot take it againe: for till a yere and a day past, & Proclamation made, he hath no propertie. And therefore the possession of the second Lord is good against him.

(d) 14 H. 6. 5.

(e) 31 E. 3. estray. 4

(f) Br. Estray. 10.

(g) 33. H. 8. Br. Estray. 4.

Goods wrecked are also his.

Stat. prer. 37. &

D. 62. 2 Br. wrecks

3 that this was at

the Common law.

Statutes.

Wrest. 1. c. 4 Where a man, dog, or cat escape aliue out of ships, it shalbe no wreck.

N

But

But the things shall bee prised by the Sherife or Coroner, and deliuered to those of the Town where they be found, to answer for them. So as if any within the yere and day prooue that the goods be his, they shall be restored to him.

10. E. 1. 323.

The King being Tenant in Common of an entier Chattell personall, shall haue the whole. As if an obligation be made to two, or two possessed of a horse, and one is attainted, the King shall haue the whole due of the Obligation, and the horse.

(a) 7. E. 4. 13.
38. H. 8. Br. *denifm*
10. 8. 16. 20.

Goods that belong to an Alien enemy, (a) any body may seise to his owne vse. But an Alien borne in amitie may haue proprietie in goods, and buy and sell, & their bargaines good: and may also bring personall Actions.

7. E. 4. 13.

The taking of goods by an Alien enemy in battaile, deuetheth the proprietie from the owner, if he come not before Sun set to claime them.

11. H. 7. 17.

Churchwardens are inhabled to haue goods to the behoofe of the Parish. For they are charged to find diuers things belonging to the Church, as ornaments, and such like: And therefore in reason they should be inhabled to purchase goods. And thereto extendeth their Corporation. And all the Church goods, as (a) bookes & ornaments, (b) bells hung vp in the Church, are theirs, and (c) they may haue an appeale of robberie of them, or a (d) trespassse, and count, to the dammage of the parishioners.

(a) 8. E. 4. 6.

(b) 11. H. 4. 12.

(c) 11. H. 4. 12.

(d) 8. E. 4. 6.

But

But they cannot giue or release them, for ^{13.H.7.10.}
that is to the disaduantage of the Church. (f) ^{2.E.4.6.}
And if they do, the Parish may chuse new
Church-wardens, who shall haue an Acti-
on of account against them. (g) But church- ^{(g) 12.H.7.27.}
wardens are not inhabled to take a feoffe-
ment, a lease for life, or perhaps for yeares,
or such other things as haue continuance.

CHAP. 18.

Of Baylement and Contracts.

T ^D Chattels personels, Bailement,
and Contracts doe belong; Bayle-
ment is a deliuerie of goods in pos-
session, and is either to keep or im-
ploy. To keepe when onely the ca-
stle is committed to him, and is a simple
Baylement or pledge.

A simple Baylement, when he receiveth
them to keepe for another: whether it bee ^{5.H.7.18.}
for the Baylor to redeliver him againe: in
which case the Bailor may retake them
without request: or for a stranger to bayle ^{1.E.5.2.}
them over to him. In which case, before
such bayling over, the Bailor may counter-
mand the Bailement, and command the
Bailee to deliuer them him againe, & shall
haue an account vpon refusall. For in nei-
ther of these cases the propertie is out of the
Baylor.

A pledge is when he receiveth them in ^{5.H.7.1.}
assurance

assurance for another thing had of him at the time. As to take a chayne of gold for monie then deliuered, &c. but not for satisfying of a debt he oweth. But the proprietie of the pledge remaineth in the owner; For he shall beare it if it be casually lost or broken: and the other that hath the pledge shall not be attached by it, in as much as he is not owner.

The baylement of goods to imploy, is, when the Batlee hath the things themselves to use to anothers profit. As to sell *meliori modo quo poterit, &c.* Where, if he sell that for xij. l. which is worth 1000 l. and refuse a better price, the partie hath no remedie.

Contract is a mutual agreement for the verie proprietie of personall things where the dutie growing upon it cannot be appoynted. As if I sell my owne horse and the horse of I. S. to one for x. l. and I. S. taketh his horse from the vendee, yet the vendee must pay me the whole x. l. **Of this kind of contracts are buying and selling, borrowing and lending, and such like, and in all these cases an Action of Debt lieth.**

The sale of another mans goods in open market (we call it market ouert) without Couine or notice whose they are, altereth the proprietie if tolle be paid for it.

Hither belong certaine (as it were) contracts in Law, though not arising from the speciall agreement of the parties. As hee that findeth anothers goods is chargeable by

by reason of the possessiō to him that right hath: he that receiueth monie to ones vse, or to deliuer ouer to him, is chargeable as a receiuer. He that entreth into land of his owne head, and receiueth the profits of it, or parents that occupieth land purchased by an infant, are chargeable as Bailifes. And if a Liberate be deliuered to the Clarke of the Hamper, who hath assets in his hands, an Action of Debt lieth against him. So doth it vpon euerie iudgement.

CHAP. 19.

Of Accord and Arbitrement.

These are the things which belong to Chattels personall in gene-all: for the interest of personall things, vncertaine, accord (otherwise called a concord) and arbitrement lie.

As of a trespassse done, for the damages are vncertaine; but of debt or dammage recovered in certain, it is otherwise, vnlesse it be ioyned with trespass or other things vncertaine: for then all put together, lie in arbitrement or concord. So of Wast, detinue of charters of land, which are things in the realtie, annuitie, &c. they lie not in arbitrement or concord.

Accord, is an agreement betwēne the parties themselves: not by meditation of friends; for then it is an Arbitrement

15. H. 6. accord. 1.

(a) 17 E. 4. 8.

(b) 6. H. 7. 12.

Upon a satisfaction executed: As for one at his owne cost to agree, I. S. and another, whom I. S. hath trespassed, this may be a satisfaction to I. S. Otherwise it is, if hee doe but indeauour to agree to them. And this satisfaction must be executed: for a tender (a) of monie without payment, or an (b) agreement to pay monie at a day to come, is no satisfaction before the day come, and the monie be paid: nor shall be pleaded in barre of an Action of Trespasse: for vpon an Accord, the partie hath no meanes to compell him to pay it, as he hath vpon Arbitrement. But being paid at the day, it is a good plea if the other afterwards bring an Action.

(c) 16. E. 4. 9.

19. H. 6. 36.

Arbitrement is an award of satisfaction by others whom they chuse to iudge betweene them, As to arbitrate because A. (one of the parties) hath done a greater trespassse to B. (the other partie) than B. hath to him; therefore that A. should giue B. monie in satisfaction, and B. bee quit against him, is a good award. But that one shall be *non suite* in an Action, is not good; for after *non suite* hee may begin againe, whereas the Arbitrement (which must bee in some sort a satisfaction for the dammages) ought in that respect to bee a determination of things awarded. **Where the award of a personall Chattell altereth the proprietie thereof.** So as hee may haue a detinue (a) for it, or debt if it bee of mony,

(a) 2. El. Dy. 133.

monie, or such like, to be paid for (b) (b) 16.E.49.
 a debt due, or (c) amends of a Trespass. (c) 19.H.6.38.
 And therein an Arbitrement differeth
 from an Accord. But an award of an
 acre of land, &c. is not good
 vnlesse the acre be de-
 liuered.

*Et iam prima mei pars exst exa-
 Et a laboris.*

N 4 The

15. H. 6. Accord. 1.

(a) 17 E. 4. 8.

(b) 6. H. 7. 11.

Upon a satisfaction executed: As for one at his owne cost to agree, I. S. and another, whom I. S. hath trespassed; this may be a satisfaction to I. S. Otherwise it is, if hee doe but indeavour to agree to them. And this satisfaction must be executed: for a tender (a) of monie without payment, or an (b) agreement to pay monie at a day to come, is no satisfaction before the day come, and the monie be paid: nor shall be pleaded in barre of an Action of Trespasse: for upon an Accord, the partie hath no meanes to compell him to pay it, as he hath upon Arbitrement. But being paid at the day, it is a good plea if the other afterwards bring an Action.

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(a) 2. El. Dy. 183.

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 a debt due, or (c) amends of a Trespass. (c) 19.H.6.38.
 And therein an Arbitrement differeth
 from an Accord. But an award of an
 acre of land, &c. is not good
 vnlesse the acre be de-
 liuered.

*Et iam prima mei pars ex^{ta} exa-
 Et laboris.*

N 4 The



The third booke of LAVV.

CHAP. I.

Of a wrong without force.



The of possessions (the first & hardest part of Law) wee haue hitherto spoken sufficiently. The other resteth, which ministreth Justice in the punishment of offences.

An offence is the doing of any wrong. And is a wrong without force, or to the which force is coupled.

In those of the first kind, the offender is to be amerced, or to pay a pettie summe of money to the King. And (a) if he be a lord of the Parliament (whom we call a **Pier** of the Realme) then a **£. 5.** As if (b) ones writ abate, or if in (c) an Action of Trespass

(a) 38. E. 3. 31.
9. H. 6. 2.

(b) 38. E. 3. *ibid.*
(c) 9. H. 6. *ibid.*

paſſe againſt two, for hunting and taking two Deere, one Defendant bee found not guiltie, the other guiltie of taking only one Deere; here the plaintife (if he bee a Peere of the Realme) ſhall be amerced CC.s one C.s againſt him that was found not guilty aſall; the other hundred ſhillings againſt him that was acquitted of one of the Deere.

The Kings wife ſhall neuer be amerced. And therefore a writ brought by her is good enough, though this claufe, *Si fecerit te ſecurum*, be left out, for ſhe ſhal not be amerced for her *non ſuite*.

12.E. 3. 2. br. 355.

CHAP. 2.

Of Trespases upon the Caſe.

Offences without force, are trespases upon the Caſe, or Real wrongs.

Treſpaſſe upon the caſe is ſuch an offence, whereby any thing is indamaged: And is a miſuſer or deceit.

Miſuſer, when by meere wrong it is indamaged. Of which kind there be manie, and thoſe of diuers ſorts. As if a man maliciously utter any falſe ſlander to the indangering of one, in Law. As to ſay, He hath reported that monie is fallen; for hee ſhall be puniſhed for ſuch a report, if it bee falſe. The touching of him with ſome hainous

9. E. 1. Uttings caſe.

Sir Th. Cokains case.

(a) So it hath beene
adjudged

(b) 26. El. Crack-
nel 5. c.

(c) 33. El. Cebot
against Haines ad-
judged.

(a) 27 El. Hacks. c.

(b) 27. El. Bartons
case.

(c) 26. El.

(d) 27. El. Barc. e.

(e) *Alltho these cases
have beene adjud-
ged or commonly re-
ceived for Law.*

13 H 7 per 11. El.
Dy. 285.

30. H 8 Br. Alt.
for case 104.

(f) 31 El. Newels
case

(g) 7. El. Dy. 236.

(h) *It hath beene
oftentimes adjudged,
that in such cases
the conversion is tra-
nsferrable.*

(i) 7 H 6 5. &

17. El. in Mansfres
c. no action of debt
lieth upon it (as the
Common Law) but
an action of trespass
upon the case.

(k) 43. E. 3. 6.

nous crime, as that he hath gone about to
get poiso to kil the child that such a womā
goeth with (yet it is no felonie;) lien (a) in
waite to robbe him; procured (b) another,
or agreed (c) with another to murder him
(though he were not murdered in Deed;) (a)
sought his life for his land, &c. **or the
impairing his trade of life;** As to cal a mar-
chant (b) bankrupt (for it is his liuing, but
so it is not of a gentleman;) an Attornie
(c) Ambodexter, or to say that hee dealeth
(d) corruptly. But in all such cases, words
of choller and heate, as to call one cosoner,
(e) and craftie knaue, common extorcioner,
and drunkard, witch, rogue, pilloric-knaue,
villeine (vnlesse hee say villeine to such a
man, or regardant to such a manor;) words
vttered in a suite in law, as to bring a writ
of forger of false deeds against a noblemā,
or any other (though it be false) will beare
no Action; for these are not maliciously. So
if he be able to iustifie the words, for then
it is not falsely. As that he called him peri-
iured, by reason of a periurie committed in
the Star-chamber, murderer, thief, or such
like, vpon a Conuiction; (f) but not vpon an
Enditement or Common voice and fame,
though the defendant himself suspect him.
**& one hauing another mans goods, (h) con-
uert them to his owne vse: if a (i) Sherife
suffer one in execution for debt to goe at
large: if a Smith (k) cloy my horse: but
not if he take him to cure (without warran-
ting of him) and doing all he can, yet the
horse**

horse impaire. If being committed to the Gaole, the Gaoler of malice put vpon me so many prons, or otherwise vse me so hardly that I become lame thereby, &c. F.N.B. 93.H.

Statutes.

Westm 1. cap. 33. He that publisheth any false newes and tales, whereby discord, or occasion of discord and slander may grow betweene the King and his people, or the Nobles, shal be kept in prison vntil he hath brought him forth into the Court, that did speak the same.

2. Ric. 2. cap. 11. The like for him that telleth false lies of Nobles and great Officers of the Realme, whereby discord may arise betweene the said Lords and Commons.

12. Ric. 2. cap. 11. In the case of these former Statutes, if the party canot bring forth him that spake the same, he shall bee punished by the aduice of the Counsell.

But two aboue the rest do here require more speciall consideration, that is to say, **Disturbance, and Nuisance.**

Disturbance is the hindering of that which in right belongeth vnto one to doe. As for a man to vse his Common; to reduce a water-course that is misturned, to present vnto a Church, &c.

Nuisance is annoyauce done to ones hereditament. As leuying a Faire or market to F.N.B. 184. a
F.N.B. 184. d.

to the Nufance of another Faire or Market, building a house so neere mine, that the rayn which falleth from that house falleth vpon mine, &c.

All manner of nufances are to be removed, and common nufances, As a wall, (a) &c. built vpon the High-way, trees (b) growing vpon the riuer banke, whereby a water-course is stopped, any man may pull downe.

(a) 33. H. 6. 26.

(b) 42. Aff. l. 5.

F. N. B. in his writ
of Deceit.

Deceit, when the damage groweth by an vndue sleight. As if a man purchase a writ in my name out of the chancerie, I not knowing of it, whereby I am to pay a fine; or if one (whom I make my Attornie in a plea of land against mee) make default, whereby the land is lost: Or if in a *Præcipe* against diuers Tenants, a man purchaseth a protection for one of them, supposing him to be beyond-sea in the Kings seruice, where indeede he is and alwaies hath beene in England, by means wherof the demandant is delayed: or if in a *Præcipe quod reddat*, the Sherife returne the tenant summoned, where indeed he was not, whereby he looseth the land: or if in play one winne another's monie with false dice, or if he that selleth any thing doe vpon the sale, warrant it to be thus and thus, whereby the other is deceived. So that the warrantie must be parcell of the contract: for if it be (a) after, (at another place) or (b) a seruant make the warrantie vpon the sale of his masters goods (which in law is the masters sale, & war-
warran-

(a) 5. 7. 41.

(b) 11. E. 4. 6.

warrantie of the seruant) it is a void War-
rantie, and no Action of deceit lieth vpon
it. Also the warrantie can reach but to
things in being at the time, not to things to
come: as that a horse (c) will carrie you xxx
miles a day: nor to things which may bee
discerned by my five senses to be otherwise,
as cloths of murry color to be blew, vnlesse
the buyer in this case bee blind. But where
they are warranted to be of such a length, &
are not, there an action of deceit lieth: for
that cannot bee discerned by sight, but by a
colaterall proof, the measuring of them.

CHAP. 3.

*Of certaine offences punishable by
amercement by the K. Prerogative.*

Certaine offences against the law,
are in nature of trespasses vpon the
case, and by the kings prerogative
punishable like to them. As suing an
action without iust cause, or giuing
iust cause of an Action: for (a) in euery actiō
where the matter passeth against the plain-
tife (be it by verdit, demurrer, or otherwise)
the plaintife is to be amerced, & the def. in
det, detenue, couenant, repleuin, *Quid iuris
clamat, &c.* (b) but not in tre'passe, for there
he shal be fined & imprisoned. *Non-suit* (c)
in an actiō, (d) fault in the original writt hee
bring it: or (by the Sherif) in the return of a
writ: making (f) default when he should ap-
peare. (as the Iurors at the *Habeas corpora*)
and

(a) So are all the
precedents.

(b) 11. H. 4. 45.

(c) 22. Aff. 32.

(d) 7 H. 6. 36.

40. E. 3. 20.

(f) 10 E. 4 Br.

amercement 46.

and whatſoever other offences (not being with force and armes) which offer no direct iniurie to a common perſon.

CHAP. 4.

of Diſcontinuance.

Hitherto of Trespases upon the Case.

A real wrong is that which medleth with the freehold otherwiſe than it ought : and is a Diſcontinuance, or Dafter.

Diſcontinuance, when he that hath an eſtate Taile, or fee-simple in anothers right, As the husband in right of his wife. A Deau ſole ſeiſed in the right of his deanrie : Deane and Chapter, Gardeine, and Chapleines ; as alſo Maior, and communalitie of lands in the right of their Corporation. maketh a larger eſtate of the land than he may. As by a Fine or feoffement for life of the leſſee, in taile or in fee, which is called a diſcontinuance. But the Graunt of a rent, releaſe, or confirmation to a leſſee for yeres in fee, make no diſcontinuance, for they paſſe without liuerie, and therefore paſſe no greater eſtate than the Graunter had.

Statutes.

Statutes.

32. *H. 8. cap. 28.* All Leases by deed indented for life or yeares, by any person of full age, hauing an estate in fee or in fee-taile, in his own right, or in the right of his Church, or wife, or ioyntly with his wife, shall be perfectly good.

This extendeth not to Leases of land in the hands of any farmour, by vertue of any old Lease, vnlesse the same bee expired surrendred or ended within a yeare after the making of a new; nor to the grant of any reuersion, nor to any lease of land which hath not most commonly beene let, or occupied in farme by the space of xx. yeares next before, nor to any lease made without impeachment of Waste, or made for about xx yeares, or three liues from the day of making. And that there bee reserved yearly payable to the lessours, their heires and successours, according to their estates, the rent accustomedly yeilded within twentie yerres next before: which heires and successors shall haue the like advantage against the Lessees, their executors and assignes, as the Lessor himselfe might. Provided the wife bee made party to euerie lease by the husband of any land of her inheritance The Lease to be made by Indenture in both their names, and shee to seale the same, and the rent to bee reserved to the husband and wife, and her heirs,
 accor-

according to her estate of inheritance,

13. *Eliz. Cap. 10.* All grants, Feoffements, Leases, and other conveyances and estates, by any Master or Fellows of a Colledge, Deane and Chapter, Master or Gardain of an Hospitall, Parson, Vicar, &c. other than for xxj years, or three liues, from the time of such lease or grant, reseruing the accustomed yearly rent, yearly payable, shall be void.

14. *Eliz. Cap. 11.* The Statute 13. *Eliz. Cap. 10.* before, shall not extend to grant assurance, or lease of anie house in Citie, Borough, Towne corporate, or Market towne, or within the Suburbs, (the same not being their dwelling house, or hauing about ten acres of ground belonging to it.) Prouided the lease shall not be made in reuerfion, and the accustomed yeerely rent shall be reserued, the Lessees charged with reparations, and it shall not bee about forty yeares. No alienation shall be of such houses, vnlesse that presently vpon such alienation there be an absolute purchase in fee simple of other Lands of as great value.

18. *Eliz. Cap. 11.* All leases made by such persons (as 13. *Eliz. Cap. 10.* before) where another lease for yeares is in being, not to bee expired, surrendred, or ended within three yeares next after the making of such new lease shall be void. All bonds
&

& covenants for renewing or making of any lease, contrarie hereunto, or to 13. Eliz. Cap. 10 before, shall be void.

1. Eliz. not printed, the like (as 13. Eliz. Cap. 10. before) for Archbishops and Bishops, valesse it bee of estates made to the King, his heires and successors.

32. H. 8. cap. 28. No fine, feoffment, or other Act by the husband onely, of any land being the inheritance or free-hold of the wife, shal be a discontinuance or prejudicial to the wife, or such as haue interest after her death: leases within the compasse of this Statute onely except.

Warrantie of an estate of inheritance, or for life, descending vpon him that ought to haue such estate, maketh a discontinuance. As if tenant in Taile of an Aduowson in grosse, suffer an vsurpation by six months, the release of a colateral ancestor with warrantie is a discontinuance, for hee hath fee by the vsurpation.

So it seemeth of a collateral ancestors release, with warrantie to the Grantee in fee of a rent or aduowson in grosse by Tenant in Taile. But if Tenant in Taile of a rent or aduowson in grosse grant it in fee, with warrantie; this is no discontinuance, but at the pleasure of the issue.

Discontinuance taketh away the entrie of those that come to haue title after his death. If he (whose entrie is
O bars

L^{it} 152.

11. E. 4. 1.

21. E. 3. 26.

barred by a discent or discontinuance) have the freehold cast upon him by a new title, he shall be in of his ancient title: which is termed a remitter. As if the heire of the disseisor (in by discent) make a lease for life to I. S. the remainder for life or in fee to the disseisee, if Tenant in Taile discontinue, & then disseise the discontinue, & die seised, whereby the lands descend to his issue; if the husband make a feoffment in fee of land in the right of his wife, and take back an estate in fee to him and his wife. In these cases the disseisee after the death of I. S. the issue in Taile, and the wife surviving, her husband is remitted: but if the husband survive, her heire is not; for there is another tenant of the Freehold, against whom he may bring his Action. And in the case of Tenant in taile before, though the heire of the Discontinue were within age at the time of the discent to the Issue in taile, yet his entrie is gone for ever, by reason the Issue is remitted.

CHAP.

CHAP. 5.

*Of Intrusion, Abatement, Disseisin,
and vsurpation.*

Ouster is, when the Freeholder is ousted, or put out. And therefore it gaineth a Free-hold vnto the partie.

This ouster is of a Freeholder in Deede, or in Law. Of the first sort are Intrusion, or Abatement.

Intrusion, which is after the death of Tenant for life, be it a mans own life, or another mans, Tenant in Dower, or by curtesie, &c. *Old Nat. Br. 135.*

Abatement, which is after the death of one that hath the Inheritance, whether the land discend vnto his heire, or he die without heire. *5 H. 7. 6.*

Of the second sort are, Disseisin & vsurpation

Disseisin is the ousting of him that hath a Free-hold in Deede : which of a rent or other profit is by the disturbing of him in the meanes of comming to it. As in euery Rent, whether Rent-seruice, Rent-charge, or Rent-secke Encloser and Forcstaller. *Lit. 62. Lit. 52.*

Encloser is, when the Tenant encloseth the Land, so as he cannot come to distrain, or to demand it. But if it be a Parke or such like, *99. E. 3. 15.*

like, that hath of ancient time beene inclofed, so as it is not done of purpose to keep him from his rent, that is no disseisin.

Fozestaller is, when the Tenant beleteth the way with force and Armes vpon his comming. Of which nature also is the menacing of him, that for doubt of some bodily hurt, death, or losse of member hee dare not come.

In a Rent-service and rent-charge, Rescuous, and Repleuin.

Rescuous, when either the partie hauing distreynd; the distresse is rescued, or being vpon the land to distreyne, cannot be suffered.

Repleuin is, when an Action of Repleuin is brought vpon a distresse taken.

In a Rent-charge and a Rent-seck, denier.

Denier is, when the Rent (beeing demanded vpon the Land) is not paid.

Usurpation is, when the Church becommeth full by the presentment of a wrog Patron: which is done by the institution of the partie presented.

Prerogative.

But against the King, **Induction onely** doth it. Therefore at the Common law, in a *Quare impedit*, Plenartie day of the Writ purchased, is a good plea, though it bee by institution onely. And the Plenartie by
sixe

sixe moneths (which barreth the right Patron of his *Quare impedit*, by the Statute *Westm.* 2. *Cap.* 5.) is accounted from that time betweene common persons. So is it for the King when he presenteth. And in these cases the Ordinary may certifie a plenartie without making mention of any induction, but of admission and institution onely. But against the King plenartie is accounted from the time of induction, and not before. And if a Patron that holdeth of the King, present, and die after admission and institution of his Clark, and before induction; the King shall present a new. Otherwise it is in the case of a common person. But Plenartie is no plea in a *Quare impedit*, against a person impersonce (that is, a Spirituall Bodie politique, which beeing Patron, hath the Church appropriated in succession, (*viz.*) to hold to their proper vse, without presentation, institution, or induction of any incumbent) for his plea must be, That the Church is full of his presentment, which a person impersonce cannot say.

Statutes.

Westm. 2. *Cap.* 5. Vsurpation vpon Gardeins tenants in Dower, or vpon femes couert, or houses of religiō in time of vacation, shal not put the heires fems, or houses of religion out of possession. But faint recoveries shal not be auoyded in such cases by way of plea.

Plenartie is no plea in a *Quare impedit*, or darreine presentment, if the Writ bee purchased within vj moneths.

When one parceller presents in anothers turne, yet this gaineth no possession; for the other may present when her turn commeth againe.

CHAP. 6.

Of Trespasses in goods.

Such is the nature of an offence without force.

Stat. 37. H. 8. ca. 8.
resisteth the Common
law to be se.

An offence without force is a **Trespass** (or offence) against the Crowne. For in all Inditements and Inquisitions, of treason, murder, felonie, trespassse, &c. *vi & armis* must be in, else it is not good.

Trespassse is a criminal offence punishable by a fine unto the King. So is euerie contempt punishable: and for this reason no action of Trespassse lieth for the Lessee for yeres, against the Lessor, (though he distreyne without cause) for that the Statute of Marlebridge, cap. 4. is, That he shall not be punished by fine and ransome; which if he be attainted in this action, he must needs be, and for this the partie must be imprisoned till he doe compound. Therefore after tender of his fine, the king cannot iustly detain him in prison.

Trespasses touch possessions or the person.

son. Possessions, when the wrong is don in them, namely in goods or land.

Trespasse in goods, is the wrongful taking of them with pretence of title. And therfore alreth the property of those goods. So as one cannot declare in an Action of trespasse, that the defendant took his horse at S. and carried him to D. and there killed him against the peace, &c. For by wrongful taking, the propertie being diuested out of the plainrif, and vested in the defendant, consequently it followeth, that hee cannot kill his owne horse against the peace.

CHAP. 7.

Of Trespasse in Land.

Trespasse in land is, when the trespasse is done vpon an actual possession thereof. For of a trespasse don

(a) after the death of the Ancestor,
and before the heires entrie: after (b)

(a) 11. H. 7. 22.

(b) 1. Mar. Pl. 143.

breach of the Condition, and before entrie for it: where a lease for yeares is made, reseruing a rent, vpon condition to be voyde if the rent be not paide: or after Michaelmas, and before the Lessees entrie, where a lease for yeres is made to begin at that day: no Action lieth for the heire in the first case; for the Lessor in the second, nor for the Lessee in the third. Because they were not seised of the Land at the time of the trespasse done; yet the Lessor in the second

Park 4

case might haue made a new lease before his entrie; for the first lease was meerly void, and the Lessee in the last case, might before Michaelmas grant away his terme.

21. H. 7. 39.

15. H. 7. 13.

Where beasts or any other Chattells, shocks of Corne, or whatsoeuer else, whether Conisance may be of them to bring a Repleuin, or not: **that so the Trespasse may be distreyned by him that hath damage by it.** As one that hath Common out of land, though he haue nothing in the land it selfe, soas he can haue no Action of Trespasse against the owner of the beasts, for their entrie into the land, nor the grasse wasted, &c. yet he may distrein them damage feasant, because of the damage hee susttaineth. But so cannot *Cesli qui use*: for he hath nothing at all to doe in the land, saue that there is a confidence between the feoffees and him: but the feoffees may punish him by the Common law, if he occupie the land, for he is but a meere stranger. And if a stranger of his owne head driue out beasts that are damage feasant, the owner of the beasts shall punish him, for he is indamaged by this driuing out, and the other hath no losse.

F. N. B. 120. f.
1. H. 6. 1.

Whither belongeth Eiectment, when a termier for yeares of land is ousted: Whether by the Lessee or a stranger, but not a Termier for yeares of beasts or other Chattells.

Prerogative.

Prerogative.

Here (viz.) of land, which is a thing permanent for things transitorie and removable: the King may be put out of his possession, and haue his Action according, as raiſement of gard, *Quare impedit*, &c. But of things permanent hee cannot haue an Action, as a *Præcipe quod reddat*, eiection of ward, &c. because of such things he cannot be put out of possession: the King has **uing possession** by matter of Record, or other good title, none can put him out. But if hauing no title by matter of Record, or otherwise, he enter vpon me & put me out, there if I enter againe, my entrie is lawfull, and no intrusion. So if the king seise vpon an office, finding that his tenant died seised but of an estate for life, the reuerſion to another; he in the reuerſion may enter, and make a feoffment: for the King seiseth by colour of a Record, which Record giuerh him no title indeed.

1. H. 7. 19.

Stat. prer. 74.

8 H. 4. 16. p. Stat. prer. 57.

CHAP. 8.

of Menaces.

Trespases to the person are with pretence of violence, or violence indeed. Pretence of violence, as Menaces & Assaults.

Menaces are threatening words of beating

(a) 18. E. 4. 28.

(b) 7. E. 4. 24.

beating one, or such like, through feare whereof ones businesse is fozeelowed. For a menace onely (without other losse) maketh not the Trespasse, but both of them together.

CHAP. 9.

Of Assault.

(c) 40. E. 3. 40.

(d) 22. Affl 60.

Booke of Entries
fol. 552.

Assault is an unlawfull setting upon ones person. As offering to beate one, though he doe not beate one in deede, striking (d) at one with an Hatchet, or such like, though he do not touch him. Whether belongeth lying in waite, besetting his mansion house, and not suffering his servants to goe in and out, &c.

CHAP. 10.

Of false Imprisonment.

Violence indeede, is false imprisonment, or bodily hurt.

(a) 22. Affl 85.

(b) 43. E. 3. 20.

False imprisonment is an unlawfull restraint of libertie. As (a) arresting one against his will, though it be in the High-streete, and he neuer put in prison in any house; detaining of a woman (b) against her wil, whom he hath rauished.

rauiſhed. So if a (c) maſter imprifon one without cauſe, and deliuer the key of the dore to a ſeruant that hath notice of his wrongfull imprifonment of him, if the ſeruant deliuer him not, he ſhall bee puniſhed in an Action of falſe imprifonment. But if the imprifonment be vpon a falſe & feined ſuite, as in ſuing (d) execution vpon a ſtatute marchant, when the monie is paid, yet no Action of falſe imprifonment lieth, for he is imprifoned by courſe of Law.

(c) 22. E. 4. 45.

(d) 43. E. 3. 33.

CHAP. II.

Of Batterie.

Bodily hurts are either outward violences onely, or Rape.

Outward violences onely, are Batterie and maim.

Batterie is the wrongfull beating of one. But if a man will take away my goods, I may lay my hands vpon him, and diſturbe him, and (if he will not leaue) I may beate him, rather than he ſhall carrie them away, for that is no wrongfull beating.

9. E. 4. 28.

CHAP.

CHAP. 18.

Of Maime.

Maime is the wrongfull spoiling of a member defensive in fight. As cutting off ones finger, knocking (b) out ones foretooth, (c) putting out his eye, &c. Otherwise it is of knocking out his grinding teeth, cutting off ones eare, nose, &c. for these are but deformities.

(a) 18.E. 3. 94.

(b) 8.H. 4. 31.

Corone 458.

(c) Bris. & Bract.

2 Stauf. 38. b.

CHAP. 13.

Of Rape.

These are outward violences only: Rape is the carnall abusing of a (d) woman against her will. But if the woman conceiue vpon any carnall abusing of her, that is no rape, for she cannot conceiue vnlesse shee consent.

(d) 9.E. 4. 26.

(e) Bris. per Stauf.

34.

Statutes.

6.R. 2.c. 6. If the woman after rape, consent, as wel she as the rauisher be dishabled to haue any heritage, dower, or Ioint-tenement after the death of their husbands and

An.

Ancestors, and the next of bloud shal haue
title to enter incontinently.

CHAP. 14.

Of Contempts.

Certaine offences against the King
are in the nature of trespasses, and
are termed contempts: as (a) ma-
king rescous vpon his writ ser-
ued, (b) going armed in his palace,
ec. where sometime the punishment is in-
creased according to the qualitie of the of-
fence, not onely in the fine, but further, in
the losse of member, and such like. As a ju-
ror appearing, and being challenged, if hee
do not appeare vpon demand, when hee
is found indifferent, shall bee fined by the
value of his land by a yeare. He that smi-
teth a man (d) in Westminster Hall, or
a Iuror in the presence of the Iustices, shall
haue his right hand cut off, his land and
chattels forfeited, and in the latter case bee
committed to perpetuall prison.

(a) 38 H. 3.

(b) 24 E. 3.

36 H. 6. 37.

(d) 41 E. 3. Comm.
280.

(e) 19 E. 3. Ind. 20.
m. 174.

CHAP. 15.

Of Offences against the Crowne.

Thus much then of Trespasse, it remaineth to speake of offences against the Crowne, which are criminall offences, punishable by death.

Where further also all the offenders both hereditaments, As lands, rents, &c. whether for life (a) onely, or of (b) an estate of inheritance, & chattels, not onely in possession, (c) but such as he hath but a right to, As lands (d) wherof he is disseised, debts, (e) goods (f) to be accounted for, or wrongfully (g) taken; But (h) not such as he is to recover but damages for, as in batterie, &c. are forfeite to the King. And that as well in Felonie, as Treason, saue onely in felonie land of inheritance is forfeite to the Lord, as appeareth (i) afterwards.

Hereditaments (k) from the time of the offence, (whether the attainder be by Outlawrie, verdict, or howsoever else) **Chattels**, though real, (l) as a lease for yeres, &c. from (m) the time of the attainder onely. So (n) as a sale or gift before, is good, for he must liue of them. And therefore after enditement, and before attainder, the goods shall not be remooued out of his house, but shall bee

(a) *Stamf.* 186 b.
& 190

(b) 22. *asspl* 4 in
high Treason.

(c) 29. *Asspl* 63.

(d) 6. *H.* 7. 9.

(e) 29 *asspl* *ibid*.

(f) 50 *asspl* 5.

(g) 29. *Asspl* *ibid*.

(h) 29. *Asspl* *ibid*.

(i) *chap.* 16.

(k) 30. *H.* 6 5.

(l) 5. *Mar.*

(m) 8. *E.* 4. 4.

(n) 8. *E.* 4. *ibid*.

7. *H.* 4. 47. *Br* *forf.*
de terr. 10.

be in the keeping of his neighbors. And in these and all other forfeitures, as vpon an (o) enditement of *fugam fecit*, or (p) if one be taken with the manner, vpon a robbery, or (q) tarrie the exigent, &c. the Towne is chargeable with the goods, and therefore (r) may seise them wheresoeuer they be.

(o) 5. H. 4. *ass.* 32.
(p) 3. E. 3. *cur.*
147.
(q) 22. *ass.* pl. 8. r.
(r) 22. *ass.* ibid.

Statutes.

31. E. 3. cap. 3. No man nor towne shall be charged in the Exchequer, by the extract of the Iustices, of the Chattels of fugitiues, or felons, if they can shew that another is chargeable.

1. Ric. 3. cap. 3. No Sherife, Vnder-sherife, or escheator, Bailife of Franchises, nor any other person, take or seise the goods of any person arrested, or imprisoned, before that such persons, so arrested and imprisoned be conuict, or attainted of such felony, according to the Law of England: or else the same goods otherwise lawfully forfeit, vpon paine to forfeite the double value of the goods so taken, to him or them that shall be thereby indammaged, by Action of debt in this behalfe to be pursued.

The blood also is here corrupted. So as a remainder to his right heire, can neuer take effect. The eldest son attainted of felony in his fathers life time, and him surviving, or his issue (a) (if he die before) cannot inherite: and besides, shall be an impediment

37. H. 8. *Br.* *dm.* 43
22. H. 6. 38.

(a) 32. H. 8. *Dy.* 43

(b) 22 H 6 *ibid.*

(c) 32 H 8 Dy. 3.

pediment, that the younger brother cannot, but it shall go to the Lord by escheat. Otherwise (c) it is if the eldest sonne die without issue in his fathers life time.

(d) Lit. 169

(e) 3 & 4 Pb. & Mar. Dy. 140.

Lastly, the wife looseth (d) her dower, And notwithstanding (e) the husband alien the same before the offence committed;

Statutes.

1. E. 6 cap. 12. No dower shall bee forfeit, by the husbands attainder, of any murder, or felony whatsoeuer.

Prerogative.

3. E. 3. corone 209.

3. E. 3. corone 289.

5. H. 4. foif 32.

(f) 12. E. 3. corone 377.

14. E. 2. § 19. El.

Dy. 355.

(g) 8. E. 3. cor. 427.

(b) 26 ass. pl. 47.

(i) St. mf. 25. b.

(k) 9. H. 4. 1.

(l) Stamf. 22. i.

Those that flee for feare of the offence (we call it a *Fugam fecit*) forfeit their chattels Accessories after the fact, that is to say **Switting maintainers** (and (f) if it bee of one outlawed in the same County, though they haue no other notice of it) as by (g) receiuing one that flieth for it into his house, and shutting the doore, so as the Countrey thinking him to be there, he escape whilest no man followeth him; ayding him with money, but not with good words, as wholsome aduise speaking or writing for his deliuerie, And therfore also that suffer (i) one arrested whether by themselues or any other to escape which we call a voluntarie escape, are guiltie of the same offence.

Prerogative.

Concealing the offence, without discovering it vnto the king, or his Councell, or to some Magistrate, is called misprision, and that forfeiteth (a) chattels, and hereditaments during their life.

CHAP. 16.

Of Felonie.

Offences against the Crowne be of two sorts, Felony, and High treason. Felony is an offence of the Crowne not bent immediately against the State, where the forfeiture of the offenders (b) inheritance is given to the Lord (whether it be in petic (c) Treason, or other Felonie, and (d) at any time after he is attainted; And therefore the Lord may haue a writ of Escheat before execution. But (e) of lands (whereof one is seised in the right of his wife) the King shall haue the issues during the husbands life.

(b) 27 E. 3. Escheate 17.
(c) 22. af. pl. 49.
(d) Stamsf. 198. a.

(e) Stamsf. 190. r.

Prerogative.

The King, both (f) here, and wheresoever (g) the offender was dispuishable of wast (as if hee were seised of land in the

(f) Stamsf. 190. a.
(g) Stamsf. 190. a.

right of his wife) is utterly to wast the inheritance, by rooting vp the houses & trees, plowing vp the meadowes, digging vp the land, &c. And this is in detestation of the offence.

Statutes.

Magn. Charta, cap. 22. The King shal haue the land by a yeare and a day, & then render it to the Lord of the fee.

Prerogative, cap. 15. giueth the king the profits by a yeare and a day, and moreover the wasting of it.

C H A P. 17.

Of Stealth.

Felonie is a bare Felonie, or petit treason.

Stat. 182.

Bare Felonie is a Felonie of the lowest nature, and is punishable by hanging.

This is simple, or mixt;

Simple, as stealth, and man-slaughter.

4.H.7.5.

Stealth is the wrongfull taking of goods without pretence of title. And therefore altereth not the propertie, as a trespassse doth, so as vpon an appeale the partie shall re-haue them.

Stat. 182.

Statutes.

21. H. 8. cap. 7. (made perpetuall, 5. Eliz. cap. 18.) The seruant that hath any goods or chattels deliuered him to keepe by his master, and (with an intent to steale) doth either goe away therewith, or being in seruice, imbezle, or conuert the same to his owne vse, shall be iudged a theefe, if the value of the goods amount to xl.s.

This extendeth not to Apprentices, or any person within eight yeares of age.

Inne-keepers must answer for goods of their guests stolen: though they let them haue a chamber with a key vnto it, to keepe their goods in. But if the guest suffer with his good will a stranger (whom he knoweth not) to lodge with him in the chamber, and the stranger rob him, the Inn-keeper shall not be charged. Otherwise it is, if he be lodged there by the Inn-keeper.

22. H. 6. 21.

Prerogative.

Goods confisked; that is to say, **which the theefe, attainted for stealing another thing,** for if it bee for stealing the same goods they are said to bee forfeit, and not confisked, **disclaimeth to haue any proper- tie, in and waifes;** that is to say, **which a theefe** (but not one that committeth a trespasse) **waiveth;** **are the Kings, if he** (whether any officer of his, or the Lord of the

(a) 3. E. 3. coram 371.

(b) 3. 3. 3. coram 355

(c) 12. E. 4. 5.

(d) 21. E. 4. 16.

21 E. 4. *ibid.*
7. H. 4. 43.

Franchise, seise them befoze the partie from whom they were stollen. But if the party from whom they were stollen seise them first, (though it bee not in xx yeares after they be stollen) or doing his diligence to apprehend the theefe, which is called fresh suite; whither the theefe bee taken at his suite or not, commit him afterwards upon an Appeale; he shal haue his goods again.

Statutes.

21. H. 8. cap. 11. The partie shal haue restitution of his goods without fresh suite, if he or any for him giue in euidence, by reason whereof the other is attainted.

27. H. 8. 23.

The stealing of goods which exceed not the value of xii. d. (called pettie Larcenie) is a felonie (for a man may iustifie the calling of one theefe for such an offence) that doth onely forfeit his Chattels.

CHAP. 18.

Of Man-slaughter.

(a) *Statut* 21. d.

(b) *Statut* *ibid.*
2. *pl.* 2.

Man slaughter is the killing of any person (a) bozne into the world, though he be not baptised. But (b) to kill an infant in *uter sa meere*, is no felonie.

Statutes.

Statutes,

21. **C. 1. Stat. de male fact in parcis :**
It is no Felonie for Forresters to kill misdo-
ers, if they will not submit themselves.

But if one live a yeare after an act com-
mitted, which was the cause of his death,
as beating, (c) poyson (d) giuen him, &c.
it is no felonie in him that did the Act : but
this death shall bee accounted a naturall
death.

(c) 3. E. 3. *Coram*
303.
(d) *Statut. 21. d.*

The killing of one by (e) chance (which
we call by misfortune, or misadventure) in
the doing a lawfull act. But not if A. B. be
fighting and C. comming between to part
them, bee slaine by either of them both
without any ill entent, for that is felony
at the least if not murder, in him that kil-
leth C. because the thing which they were
doing was vnlawfull, or in his owne de-
fence, which we call *Se defendendo*, flying
as farre as he may to save his life, for o-
therwise it is felonie, though the other pur-
sue him, both onely forfeit his chattels,
and he must haue a charter of pardon.

(e) 2. H. 4. 18.
(f) *Statut. 16. c.*

(g) 4. H. 7. 2.
(h) 43. *Ass. pl. 31.*

Statutes.

Gloucester. cap. 9. Hee that killeth a man
by misadventure, or *se defendendo*, must put
himselfe vpon the countrey, and if he bee
found to haue done it so, the King if he
please may pardon him.

Martib. cap. 25. To kill a man by misadventure shall be no murder.

(e) 26. aff. pl. 32.

(f) 26. aff. pl. 23.

But the killing of one that attempteth to robbe him (whether (e) vpon the High-way, or (f) when men come to his house, & compasse it about to burne it (though they do not burn it) whereupon he issueth out & killeth one of them, is neither felonie, nor causeth any forfeiture at all.

Prerogative.

(a) 8. E. 2. Coron. 389.

(b) 3. E. 3. coron. 140.

(c) 8. E. 2. cor. 397

Any vnreasonable thing killing a man: As the wheele of a mill, when one falleth from the bridge into the water, and is carried by the violence of it vnder the outward wheele; the taske of Corne that a man falleth from, and so receiueth his death: it, and ~~euery~~ thing mouing with, it is forfeit to the King. As if a man beeing vpon a Cart carrying Faggots, and binding them together, fall downe by the mouing of one of the horses in the cart, and die of it: both that and all the other horses in the cart, and the cart it selfe, are forfeit. And these are called Deodands.

CHAP.

CHAP. 19.
Of Chance-Medlie.

Man slaughter is Chance-medlie, or murder.

Chance-medly is man-slaughter without former malice. As if certaine set vpon one to kill him, and I.S. hauing no malice against him, & being in the companie, and seeing them combating, take part suddenly, and together with the rest smite him that he die, this is Chance-medlie in I.S. 1. M. Pl. 100.

CHAP. 20.
Of Murder.

Murder is Man-slaughter vpon former malice: which wee call premeditated malice. As if one to kill his Wife, giue her (lying sicke) poyson in a roasted apple: and she eating a little of it, giue the rest to a little child of theirs, which the husband least he should be suspected, suffereth the child to eate, who dieth of the same poyson; this is murder though the wife recouer: for the poyson ministred vpon malice premeditated, to one (which by a contingencie procureth 18. H. Tl. 474.

P 4 the

the death of another, whom he meant not to kill, nor bare any malice to) shall bee as great an offence, as if it had taken the effect which he meant, proceeding from a naughtie and malicious intent.

ELPH. 8.

Felonie *de se*, That is, he that murdereth himselfe, both onely forfeite his Chattels, But not his lands; neither doth it worke corruption of bloud, nor looseth the wiues dower, because it is no attainder indeede: But his Chattels he doth forfeit, reall and personall goods, debts, &c. And this forfeit shall haue relation to the time of the act in his life, which was the cause of his death. So as husband and wife beeing possessed joyntly of a terme for yeares of land, and the husband drowning himself, the term is forfeite to the King; and the wife suruiuing shal not haue it: for the Kings title is from the casting of himselfe into the water, which was before the wife had any title by suruiuor. And this forfeiture is as strong to giue away the term as an expresse grant, which the husband might haue done and barred his wife.

CHAP.

CHAP. 21.

Of Robberie.

Murt, is that kind of bare Felonie
which riseth from the former.
whereof there bee two sorts,
Robberte, and Burglarie.

Robberte, is stealth from ones
person by assault in the high-way. But if
either nothing (a) bee taken, though hee (a) 9. E. 4. 16.
command him to deliuer his purse or mo-
ney, or money taken, but (b) without put- (b) 5. El. D. 7. 224.
ting the person in feare by assault and vio-
lence (as where one is indited *Quod vi &*
armis, apud B. in via regia ibidem xl. s. de pecu-
nijs numeratis, &c. felonice cepit de persona 1.
s.) it is no Robberie. And therefore in this
latter case he may haue his Clergie at this
day.

CHAP. 22.

Of Burglarie.

Burglary is the night-breaking of an
house, with an (a) intent to steale or (a) RE. 6 Br. Com.
kill; though none be killed, nor any from 179.
thing stollen. And so it is of a (b) sta- (b) 1. E. 6. ibid.
ble, parcell of a house, but (c) not of (c) 13. H. 4. 7.
breaking ones Close to kil him, nor ones
house, if it be but to beate him, nor though
it be to kil him, if it be in the day time. (d) Stat. 30. b.

CHAP.

CHAP. 23.

Of pettie Treason, properly so called.

AND of bare Felonies so much shall suffice. Pettie Treason is a Felonie, (c) For where one is arraigned for falsifying the Kings seale, (which is a pettie Treason) a Charter of pardon of all Felonies is a good plea. of higher nature than bare Felonie is; the punishment whereof is burning.

This is against mortall creatures, or against God.

Against mortall creatures, as Petty treason (properly so called) and Sodomitie. Pettie treason (properly so called) is the killing of any to whom pzinate obedience is due: as ones master, mistresse, husband, &c. for which in stead of burning, (which the woman here shall bee) a man shall be hanged and dzawne.

(e) 1. E. 3. 24.

(f) 1. R. 2. 4.
F. N. B. 269. 6.

(a) 22. ass. pl. 49.
21. E. 3. 17. Cereno
477.

(b) 12. ass. pl. 30.
19. H. 6. 14. by ma-
sters wife.

(c) 1. R. 3. 4.

(d) 12. ass. pl. 30.
1. R. 3. 4.

(e) 21. E. 3. ibid.
19. H. 6. ibid.

CHAP.

CHAP. 24.

Of Sodomitie.

Sodomitie is a carnall copulation against nature, to wit, of man or woman in the same Sexe, or of either of them with beasts.

F.N.B. 269. b. they shall be burnt, and that by the common Law.

CHAP. 25.

Of Heresie.

Against God, is that which immediately is bent against his Majesty, as Heresie, and Sorcerie. Heresie is a presumptuous oppugning of an Article of Faith: whereof what it is, the Common-Law taketh no notice. But in case of Heresie, the partie before her can be burnt, must be convicted in a Provinciall Synode; and after abjuration, make a relapse into the same or some other Heresie.

(1) Lett. Frowick, No Sanctuary lieth in case of Heresie, for it is treason against God.

(2) F.N.B. 269. b. Sorcerers, Sorceresses, and Heretiques shall be burnt, and that by the Common Law.

F.N.B. 269 b.

CHAP.

CHAP. 26.

Of Sorcerie.

F.N.B. 269.b.
45.6.3.17.

Sorcerie is a consulting with Diuels,
and containeth vnder it, Consulting,
Nigromantie, and such like.

CHAP. 27.

*Of Pettie Treason, growing by
Prerogative.*

(a) 26. aff. pl. 63.
(b) 3. H. 7. 10.
(c) 1. E. 3. 24.

Here diuers offences are ac-
counted felonie, in respect of the
Kings Prerogative, As to coun-
terfeit the Kings coyne, great seale,
or Priuie Seale; to acknowledge
any forrein person to haue any power with-
in the Realme. As (d) by pleading an Ex-
communication vnder the Popes Bull. and
are punishable as Pettie Treason.

(d) 30. aff. pl. 19.

CHAP.

CHAP. 28.

Of High Treason.

High Treason followeth, which is an offence of the Crowne, directly against the State. As in compassing the death of the King: For intending his death (without more) is Treason; otherwise it is in felony, except an act be done, or the Queene his wife, or of his sonne and heire, by leaping warre within the Realme, or adhering to his enemies: or them comforting, assisting, &c. and is punishable by drawing, hanging and quartering, in a man, drawing and hanging in a woman.

(e) 25. E. 3 cap. 2.
maketh a declaration
on of all these to be
high Treason.
(f) 13. H. 8. 12.

1. H. 7. 24.
Statut. 13. 6.

Statutes.

25. E. 3. de predictonibus cap. 2. It is made high treason to kill the Chancellor, Treasurer, or Iustice of either Bench.

Iustices of Eire, or of Assises, or any other Iustices assigned to heare and determine in their place, doing their office.

To counterfeit the kings mony.

To bring false coine into this Realme, counterfeit according to the mony of England (knowing the same mony to be false) to merchandise, or make payment with it.

To counterfeit the Kings great scale, or privie scale.

I Mar.

The third Booke

1. *Mar. cap. 6.* Scale manuell, priuie Signet, or priuie seale.

Strange coine currant in this Realme.

1. & 2. *Ph. & Mar. cap. 11.* To bring wittingly false forreine coyne hither, to the intent to vtter it within the Realme.

1. *Eliz. c. 11.* To clip, wash, round, or file, any mony of this Realme, or currant here: and causeth forfeiture of land for life only. But no dower shall be forfeited, nor bloud corrupted.

18 *Eliz. cap. 1.* To Impaire, Diminish, Falsifie, Scale, or Lighten any money by any Art, waies or meanes whatsoever.

1. *Eliz. cap. 1.* Aduisedly, maliciously, and directly, to affirme, set forth, and defend the third time by expresse deed or act, or to put in vre, or to execute any thing, for the defence or setting forth of the spiritual authoritie or iurisdiction of any forraine person, heretofore claimed or vsed in any of the Queenes dominions.

So for any person compellable to take the Oath.

To refuse (after lawfull tender) the Oath to acknowledge the Queene supreame gouernor in all causes within her dominions.

13. *Eliz. cap. 1.* To put in vre any bull, or instrument of absolution, or reconciliation from Rome, or to take vpon one (by colour

colour of any such to absolue or reconcile any person, or to publish any such Bull or instrument. To receiue such absolution, or to procure, abet, or counsell any offender to vphold him. To practise to absolue, persuade, or withdraw any person within the Queenes dominions, from their naturall obedience, or (for that entent) from the Religion now established here, to the Romish religion, or to mooue them to promise obedience to the Sea of Rome, or other Estate, or willingly to bee absolved, withdrawne, or to promise such obedience.

1. **Eliz. cap. 6.** Maliciously, directly and aduisedly, to say or hold opinion (the second time) that the Queenes Maiestie, or her heires of her bodie, be not right Kings and Queenes of this Realme, or that any other person ought to be.

Their abbettors, procurers, counsellors, aydors, &c. To affirme by any writing, printing, deed, or Act: The first time, their abbettors, &c.

33 **H. 8. cap. 20.** Attainder of high treason by the course of the common law, or statutes of this Realme, shall be of as great force as an attainder by Parliament, And the King shall haue the reall possession of euery thing forfeited without inquisition, or office: sauing to strangers, &c.

29. **Eliz. cap. 2.** No attainder of high treason (for which the party is once executed

The third Booke

sed) shall bee impeached for any error, by the heires, or any claiming vnder them.

26. *H. 8. cap. 13. & 5. & 6. E. 6. cap. 11.* Any offence (made treason heretofore) done out of the limits of the Realme, shall be inquired here by Commission, and like proceffe vsed, as if it had bin don within the realme.

One resiant out of the limites of the realme, may be out-lawed for high treason.

An estate taile shall be forfeit for High-treason.

The



The fourth booke of *LAWV.*

CHAP. I.

Of Courts.

THUS we haue gon through both the parts of Law; there remaineth yet one generall and common affection scattered throughout the whole Law, (as the blood is through the bodie,) which we call an Action.

Action is the handling of a cause in controversy before certaine Judges: who (in respect of the place where they are set to doe Justice) are commonly called a Court.

Statutes.

Statutes.

36. Ed. 3. cap. 15. All pleas which bee pleaded in any of the Kings Courts, before any of his Iustices, or in his other places, or before any of his other ministers, or in the Courts and places of any other Lords within the Realme shall be pleaded, shewed and defended, answered, debated and iudged in the English tongue, & that they be entred and inrolled in Latine.

(a) 4. H. 6. 16.

(b) 5. E. 4. 7.

(c) 7. H. 6. 5.

4 H. 6. 16.

Of all apparent faults proceeding from the Action, As in false Latine (a) or default of forme in the writ, insufficiencie in an office or Inditement, misawarding of Processe (as if of an exigent where no exigent lieth) impossibilitie in the plea, as in account, supposing him to bee his Receiuer for vij yeares, and the defendant pleads, fully accounted such a day, which is the first of those vij yeares; **The Court must take notice.** To abate the Writ, award a *Superfediis* vpon those offices, Inditements, or Processe, to stay Iudgement if the defendants plea bee found against him, &c. though the partie except not to it. And therefore although hee that casteth an Essoyne cannot pleade in abatement in the Writ, by way of plea, yet if it be a matter apparent to the Court, (as *Henricus*, &c. *Dux Hibernie*, where it should bee *Dominus*) he & euerie other stranger, as *amicus curie*, may.

may. And the Court is bound to abate it *ex officio*, though the Tenant or defendant make default.

Every Court hath power to award forth Writs. And if the Writ be not served, another of the like nature shall go forth till it be served. Therefore the second Processe is called a Sommons (or attachment, as the first Processe was) *sicut alias*; the third a *Pluries*, the fourth, and all the rest, *Plus pluries*.

14. H. 6. 20. in a
Sommons ad Writ.
7. H. 12. 20. in a
F.N. 2. 73 in a Re-
plevin.

To every Court doe belong both Clerkes and Officers.

A Clarke is hee that serveth for things to be done in Court, as entering the pleas, and such like.

Any error that appeareth to the Court to be the Clerkes (misprision) mistaking, may be amended at any time. As a good originall Writ or precept ill entered in the Rolle. A Writ against A. and B. and the whole Processe continued against B. & C. not A. and B. a *Scire facias* out of a fine & parcell of the land omitted.

7. H. 6. 45.

44. E. 3. 18.

20. E. 4. 7.

Statutes.

14. E. 3. cap. 6. No Processe shall be annulled or discontinued by the Clerkes mistaking in writing one syllable or one letter too little, or too much, but shall speedily be amended, without any advantage to the other.

9. D. 5. cap. 4. made perpetuall.

4. D. 6. cap. 3. The Iustices before such pleas or Records bee made, or shall bee depending by adiournement, errors, or otherwise, may make such amendment as well after iudgement as before.

4. D. 6. cap. 7. The former Statutes shall not extend to Records and Processe, whereby any person shall be out-lawed.

8. D. 6. cap. 12. No iudgement or Record shall be reuerfed or adnulled for error, assigned in rasing or interlining, adding, subtracting, or diminishing of words, letters, titles, or parcell of letters in any Record, Processe, or warrant of Attourney, originall Writ, or iudiciall Pannell, or retorne, though to the Iudges of the Courts where in the said Records and Processe be certifiyed (by Writ of Error, or otherwise) the same appeare suspected. But the Kings Iudges of the Courts where the said Records and Processe be certifiyed by Writ of Error, or otherwise, shal examine the same by themselves and their Clarkes, and amend therein (in affirmance of the first Iudgement) al that seemeth to them to bee the Clarkes misprision: Except Appeales, Inditements of Treason, and of Felonies, and the Outlawries of the same. And the substance of
the

the proper names, syr-names, and additions, left out in originall Writs of Exigend, and other Writs containing Proclamation. And if any Record, Processe, Writ, Warrant of Attorney, Returne, or Pannell, to be certified defectiue, otherwise than according to the writing which thereof remaineth in the Treasurie, Courts, or places from whence they be certified, the parties in affirmance of the Iudgements of such Records or Processe, shall haue advantage to alledge variance betwixt the same Writing and the Certificate: which being found and certified, the same variance shall bee by the said Iudges amended, according to the first writing.

27. *Ellz. cap. 7.* After demurrers ioyned and entred, the same Court may amend all imperfections, defects, & wants of forme, other than those onely which the party demurring shall particularly expresse with his demurrer.

Officers are those which are to serue the Courts Precepts, and where the Precept so requireth, to certifie the Court thereof: which we call a returne.

So vpon a Writ to inquire of dammages, it is a good returne that the Inquest gaue no dammages. For he returneth what they did. 44.E.3.3.

But vpon a *Capias* returned *Cepi corpus*, he shall be amerced if he haue it not there at the 44.E.3.2.

The fourth Booke

the day. For the Writ is, *Capias ita quod corpus eius habere possis, &c. tali die, &c.*

Statutes.

Westm. 1. Cap. 39. Damgages giuen against the Sherife if he returne not at all, or returne a tardie, vpon Writs deliuered or offered to be deliuered him by Billet. So vpon returning *Mandauit Balliuo libertatis* falsely: vpon resistance of any Great man to execute the Kings Precept, the Sherife shall take the *Posse Comitatus*, and see it seru'd.

Stat. Eboze 12. E. 2. Ca. 5. Bailifes of Franchises must deliuer their returnes of the Writs to the Sherife by Indenture, and if he change the Returne, the Lord of the libertie, and the partie, shall recouer double damgages.

The Sherif, &c. must set his proper name to all returnes.

27. Eliz. C. 12. Euerie Vnder-Sherife, Bailife of Franchise, Deputie, or Clarke of the Sherife, &c. must take an oth for the supremaeie, and for the true, speedie, and indifferent returning of Writs, and impa-nelling of Iurers, without taking aboue the fees allowed.

29. Eliz. Cap. 4. Sherifes may take for the seruing of any extent or execution on-
ly

ly xij. \bar{s} . of and for eueri xx. s. where the summe exceedeth not C. \bar{s} . and vj \bar{s} . of and for eueri xx s. beeing aboue an C. \bar{s} . that they shall leuie, or extend and deliuer in execution, or take the bodie in execution for.

Courts are Courts of Record, or Court Barons. For against a recouerie pleaded in antient demesne, or other Court Baron, one shall not say, *nul tiel Recorde*, for it is no Record, but *nul tiel recouerie*, and it shall be tried by the Countie. Otherwise it is in the Kings Courts. 9 E. 4. 42.

Of Records, which are the Kings Courts, as he is King. Otherwise, if the King haue a Court as Lord of a Mannour, that is but a Court Baron. **And these haue that credit, that no auerment can be taken against any thing there entered or done.** And therefore worke an Estoppell to the parties in like sort, as Indentures did before. As vpon a Lease made by fine, both parties are estopped to say the Lessor had nothing in the land. 9 E. 4. 42. 15 E. 7. 434. (a) 31. H. 8. 34. (b) 5. E. 4. 1.

So of Pleas in Barre, Replications, Returns of the Sherife, &c.

Statutes.

1. E. 3. Cap. 4. Statut. 1. Auermment giuen in a Writ of false Iudgement against the Record certified.

Q 4

Things

Things also that cannot be granted but by Deed, passe here, and that more strongly, by matter of Record.

18. Eliz. play. 483.
21. H. 7. 19.
39. H. 6. 26.
Stamf. pi. 56.

The King taketh Hereditaments, though it be but for yeates. Otherwise it is of an Obligation or Chattell personall, by matter of Record onely: for to personal and transitorie things, as *Catalla felonum & fugitivorum*, wrecke of Sea, treasure troue, and the profits of land of persons out-lawed in a personall Action, &c. the King is intituled without office or other matter of Record: but to take a Free-hold by a Condition broken, or purchase of his Villeine, or such like, hee cannot without office or matter of Record. Otherwise it is, where the Law casts a Free-hold vpon him, as in a gift in Taile, the remainder to the King.

3. Eliz. play. 229.

3. Eliz. play. 229.
5. E. 4. 7.

And therefore also the King taketh a Free-hold without liuerie or seisin by deed inrolled: but cannot be infeoffed by Deed, without inrollement of Record, for that no Liuerie can be made vnto him.

Lit. 39.

41. E. 3. Villen. 6.

Villenage beginneth onely by confessing a mans selfe to be one in a Court of Record. And therefore in a *Præcipe quod reddat*, if the Tenant say, That he is a Villeine to I. S. and holds the Land in Villenage, the demandant saith that is franke, &c. and he is found franke by the Iurie: yet he remaineth a Villeine to I. S.

Duties

Duties of the Testator growing by record, must be answered by Executors before other duties.

21. E. 4. 21.

Courts of Record are the Parliament, or Courts that have ordinarie jurisdiction. For the Parliament when it is sitting, may take a Recognisance, and doe such other things as to a Court of Record appertaineth.

1. H. 7. 20 the
higher house.
Br. Recogn. 8. 160]
lower house.

The Parliament is a Court of the King, Nobility, and Commons assembled, Having an absolute power in all causes. As to make Lawes, to adiudge matters in Law, to trie causes of life and death; to reverse errors in the Kings Bench, especially where any common mischief is, that by the ordinarie course of Law there is no meanes to remedie: this is the proper Court for it. And all their Decrees are as Iudgements. And if the Parliament it selfe doe erre (as it may) it can no where bee reversed but in Parliament.

23. El. Dyer 378.
1. H. 7. 19.

37. App. 17.

21 E. 3. 46. Br.
Parliament 16.

Statutes.

4. E. 3. Cap. 14. & 36. E. 3. Cap. 10.
A Parliament shall be holden once euerie year.

1. H. 4. Cap. 14. No Appeale shall bee pursued in Parliament.

Prerogative.

Prerogative.

Statutes of restraint binde not unless they concerne the Common-wealth, or bee specially named : As the Statute of Westm 2. which altereth fee-simple Conditionall, into an estate Taile, that Tenant in Taile shall haue no power to alien, doth binde him : for it is for the Common-wealth. So as Lands being giuen to the King in Taile, the Remainder ouer, if the K. haue issue who alieneth, & dieth without issue, hee in the remainder may enter. But if by Statute one be attainted, and his lands forfeit, with a prouiso that of such lands as hee was seised to the vse of any other *cessy qui vse* may enter, that bindeth not the King that *cessy qui vse* should enter vpon him, for it is not for the Common-wealth. But the Statute of 1. H. 5. cap. 5. that in Enditements, addition must be giuen to the partie indited, bindeth the king in that case because Enditements are especially named.

We may licence things forbidden by the Statutes. As to coyne monie which is made felonie by the Statute, and was before lawfull, for that is but *malum prohibitum*. But *malum in se*, as to leuie a nuisance in the High-way, hee cannot licence to do: but when it is done he may pardon it. But where the Statute saith his Licence shall be void, there it must haue a clause of *Non obstante*

obstante; that is to say, this clause, (notwithstanding any Statute) else it is not good. As the Statute 23. H. 6. cap. 18. is, That the Kings Grant to be Sherife of any County, longer than a yeare, shal be void, notwithstanding that the clause of *Non obstante* bee in the Patent: yet with a clause of *Non obstante* such a Grant is good, and not without it. But neither without nor by that clause, hee can dispence with a Statute before it bee made. And therefore a licence to carrie Bell-mettall out of the realme (notwithstanding any statute made or to bee made) is not good, if a Statute be made after that to prohibite it. For hee cannot dispence with an Act of Parliament before it be made.

Courts of Record which have an ordinarie Jurisdiction, are either generall, whose Jurisdiction extends throughout the Realme, or but within some Countie: wherefore these latter, for their order and course of proceeding, doe in all things fashion themselves to the example of those higher courts, as of the parents from whom they come. 14. H. 6. 41.

The former are those that are holden in Terme time onely: the whole yeare having foure Termes, Michaelmas, and Hillarie Terme, Easter and Trinitie Terme, and everie Terme severall dayes of Returnes. If either the returne day, or first or last day of Terme fall upon the Lords

Lords day, then the day following is taken in stead of it.

Michaelmas Terme (beginning the 16. of October, and ending the 28. of November) hath 8. returnes *Oclabis Michaelis* that is the 8. day after the feast of Saint Michael. *Quindena Michael*, that is the 15. day after. *Tres Michael*, that is at the end of 3. weekes after. *Mense Michael*, that is at the end of a moneth after. *Chrastino animarum*, that is the next day after *Chrastino Martini*, *Oclab. Martini*, *Quindena Martin*.

Hillary Terme beginning the 23. day of January, and ending the 12. of february hath foure returnes: *Oclabis Hillarij*. *Quindena Hillarij*, *Chrastino purificationis*. *Oclabis purif.*

Easter Terme beginning 17. dayes after Easter and ending the Monday next after Assention day, hath five returnes. *Quindena pasche*, *Tres pasche*, *Mense pasche*, *Quinq; pasche*, that is five weekes after *Chrastino Assentionis*.

Trinitie Terme beeginneth 12. dayes after Whitesunday, & continuing, 19. dayes, hath five returnes, *Oclab Trinitat*. *Quindena trinitat*, *Chrastino Iohannis Baptiste* *Oclab. Iohannis Baptiste*, *quindena Iohannis Baptiste*.

Statutes.

32. H. 8. cap. 21. Trinitie Terme shall begin the Monday after Trinitie Sondag for keeping of Essoynes, profers, returnes, &c.
The

The full Terme shall begin the Friday after *Corpus Christi* day. And haue foure returnes onely, *Crasino Trinitatis*, *Oblabis Trinitatis*: *quindena Trinitatis*, *Tres Trinitatis*. The rest are cut off.

To these Courts belongeth the power of sending forth writs.

A writ is a Latin letter of the kings from thence in Parchment sealed with his seale.

All writs haue a salutation, *Rex* to such a one *salutem*, And a conclusion expressing the name of one which is witnesse to the writ, called *Teste* (who in writs out of the Chauncerie is the king himselfe: in other writs the chiefe Iustice of the place) the place as *apud Westmonasterium*, &c. and the time both day and yeare of the making of it, if it be returnable, the day of the returne is also appointed in it.

The third writ (which is the *Pluries*) not serued, is a contempt, whereupon an Attachment lieth. And therefore the third writ hath alwayes this clause in it, *Vel causam nobis significes*: So may the second which is the *Alias* also haue, if the Plaintife will.

2.E.4.1.

Fitz. Nat. Br. 63.0

Fitz. Nat. Br. 64.0

The officer of these higher Courts is the Sherife to whom is committed the custodie of the Countie.

2.H.6.7.

For matters spirituall, as certifying excomengement and such like, the ordenary is their officer.

7.E.4.14.

And

And to the Sherife the writ must bee directed, though it bee for a thing done in a franchise, and he shall send to a Bailife of the franchise: who shall serue it as a seru-
uant to the Sherife, and the Sherife re-
turne it.

3.H.6.114.

And though the Sherife serue an execu-
tion in a Franchise, yet it is good. And the
Lord of the Franchise is driven to his ac-
tion vpon the case against the Sherife,
for the Sherife is immediate officer.

2.H.6.114.

But in a place excepted out of euery
countie (as the pallace of Westm is) it shal
bee directed to the Gardian of the pallace,
for he is immediate officer to the court, and
in the nature of a Sherife.

7.E.4.14.

8.H.6.3.

12.E.4.15.

So certificates of excommengement &,
such like must be made by the Ordinarie,
not by the Commissarie, Archdeacon, or
any other, though hee haue an immediate
iurisdiction, vlesse he were speciallie ad-
mitted an officer to the court.

**These generall courts, are the Chan-
cery and two benches: the Kings Bench,
and Common-place.**

Chancery which beside that it dealeth
with matters of Conscience, and modera-
ting the strictnesse of the common law by
an absolute power, dealeth also in ordinary
course of law in diuers cases especially, in
suits concerning the King, as petitions.
Scire facias to repeale his patents, &c. and
so

so it is a court of law and of record, where the Judge is the Chancelloz having the custodie of the great Seale of England, Under which passe all writts out of the Chancery with Tesse meipsoz; and also the Kings (a) grants, being therefore called (a) 4 El. Pl. 313 letters patents, Though it bee of things which he hath in his naturall capacitie, as by descent from his mother, &c. and are (b) (c) Courts fol. 108. entred of recozd in this Court.

Statutes.

18. H. 6. cap. 1. The Kings letters patents must beare date the day of the deliverie of the warrant to the Chancellor, and not before, otherwise they are voide.

3. E. 6. cap. 4. Euery one that hath any interest in any land or office by or vnder authoritie of the kings letters patents (made after the fourth day of Februarie 27. H. 8.) may make his title auowrie plea, &c. aswel against the king as any other by an Exemplification (or constat) vnder the great Seale.

13. Eliz. cap. 6. So of the Patentees of King Henrie, 8. E. 6. Queene Marie, Philip and Marie, & her Maiestie that now is and all claiming vnder them.

Such grants are effectnall to passe a freehold from the King without any line, 18. H. 8. 7. 74. 101. 618

37 H. 6. 21.

ry of Seisin. And therefore his letters patents being Tenant in Taile make no discontinuance. And being matters of record, which being no lyuerie, they take effect from the time of the date. Therefore the Kings Charter of pardon shall bee pleaded without shewing when it was deliuered, because being a matter of record, it shall haue relation to the date, and not to the lyuerie. Otherwise it is of a deed.

Stat. 5. El. ca. 18.

In default of a Chancellor, the Lord Keeper of the great Seale hath his authority.

The Keeper (or Master) of the Rolls, is an assistant to this Court.

In the Kings Bench and Common place, the Judges are one chiefe Justice, and three (or sometimes more) other Justices. The stile of their writs is, *teste Johanne Topham* (the chiefe Iustice, &c.)

10. El. p. 107. 320.

The Kings Bench is that which dealeth properly with Pleas of the Crown, both hearing and determining them.

10. El. ibid.

The Common place which dealeth properly with common Pleas, such are those termed which concerne possessions,

Prerogative.

10. El. ibid.

The King hath a proper Court of this kind, for al things touching his revenues, called the Exchequer.

The Judges whereof are called Barons, or housebands for the Kings Revenues:

one: being one chiefe Baron and three o-
ther. And this also hath a Court of Chan-
cery before the chancellor & Barons of the
Exchequer, called the Exchequer chamber.

The Escheator here is a special officer,
and hath a kind of Court for finding out
the Kings title to lands, tenements, or o-
ther things.

4.E.4.24. He may
take Inquisitions
virtute officij.

Statutes.

14.E.3 cap.8. No Escheator shall tarrie
in his office above a yeare.

These are the Courts whose jurisdiction
extends throughout the Realme.

Those which deale but within some
Countie, are the Sherife in his turne, and
the Coroners.

The Sherifes turne is a Court of record
for offences which are common grienances.
As a robberie, (a) bloudshed, clipping
& washing of siluer and gold, night wal-
king, the not repairing or making cleane of
a bridge or a ditch, (b) fraies and assaults,
&c. But not (c) murder or breaking of ones
hedge, &c. for they are no common grie-
uances, but a wrong to one singular person.

F.N.E.83.

(a) 22.B.4.22.

(b) 10.H.6.7.

(c) 22.E.4.24.

Whereunto every man of the age of 12.
years & upwards (being within the pre-
cinct) oweth suite, & must be swozne to the
Kings Allegiance. And this is called a suit
reall, being not due by reason of mens free-
holds, but of their body, because they are
resiant within the precinct of the Lect. But
women are not compellable to come thither

F.N.B.161.

Brit. per Br. last 39

12.H.7.18.

25.E.3.23.4

Brit. per Br. 24.

R

nor

2. N. B. Mid.

*Stat. Marl. ca. 16.
So reciteth it.*

*2. H. 4. 24.
3. R. 2. 2. 104.*

nor to be sworne to the king. And therefore when a woman is outlawed, she is said to be waued and not outlawed, because she is neuer sworne to the Law.

¶ *Diens of the Realme are excepted:* And persons of Churches, and other men of Religion, as appeareth before.

¶ The offendour here shall be amerced, and distrained soz that amercement, throughout the whole precinct of the Countie.

Statutes.

Magh Chart. 35. The Sherife shall make his turne throughout the Hundred but twice a yeate, that is to say, once after Easter, and againe after Michaelmas. And the view of frankpledge shall be made as the turne of Michaelmas.

31. E. 3. cap. 14. Stat. 1. The turne must be yearly, once within a moneth after Easter, and another time within a moneth after Michaelmas: if they hold them in another manner, they shal loose their turne for the time.

1. E. 3. cap. 17. Enditments in Sherifes turnes must be by Rols indented, one part to remaine with the enditors, the other with the Sherife.

1. E. 4. cap. 2. vpon enditments and presentments taken before Sherifes, or their ministers, at their turnes, or Lawdayes, they shall not attach, arrest, or imprison, nor leuie any fine, or amerciament of any person so indited (or presented) but shall deliuer

deliuer the same enditements or presentments to the Iustices of peace of the same Countie, at their next Sessions, who shall proceed thereupon, as if they were taken before them.

1. Ric. 3. cap. 4. None shall bee returned vpon pannell of enquirie of the Sherifes turne, but men of good name and fame, hauing within the same freehold land to the yearly value of xx. s. or copie land to the yearly value of xxvj. s. viij. d. and euery enditement otherwise taken shall be void.

The Coroners Court, is a Court for matters of the Crowne. Batterie, mayme, rape, murder, &c.

Statutes.

Westm. 1. cap. 10. Coroners shall be chosen in all Counties, of the wisest and sufficientest Knights.

14. E. 3. cap. 7. That no Coroner shall be chosen, vnlesse he haue land in fee sufficient in the same Countie, whereof he may answer to all manner of people.

28. E. 3. cap. 6. Al Coroners of the countie shall be chosen in the full Counties, by the Commons of the same Counties, of the most conuenient and most lawfull people that shall bee found in the same Counties to do the office. Saued alwayes to the king, and other Lords which owe to make such Coroners, their seigniories, and franchises.

Westm. 1. cap. 10. The sherifes shal haue

R 2

Conter-

Controlles with the Coroners, as well of their appeales, as of enquests of Attachments; and of other things which to that office doth belong.

Westm 1. cap 10. Coroners must take nothing for doing their office.

14 H. 7. 31.
4. H. 7. 3.

Upon just cause of exception to the Sheriffe, proccesse out of the higher Courts shall be directed to the Coroners.

Prerogative.

Diu of courts f. 102

The Steward and Marshall of the Kings house, have a Court, for al personal actions, and pleas of the Crowne, arising there. As debt, couenant, trespassse, &c. & by the common Law they might hold plea of freehold it selfe, as it seemeth by the statute of *Artic. super Chartas cap. 3.* which saith, from henceforth they shall not hold plea of freehold. Also they may enquire of treason, murder, felony, manslaughter, bloudshed, &c and take appeales of al kinds of felony and maim.

Diu of courts f. 102
Stamf. 57.

Statutes.

Artic. super Chart. cap. 3. They shal not hold plea of any contracts & couenants but such as one of the kings house maketh with another of the same house. Nor of any trespassse, vnlesse the partie were attached, and the plea determined before the kings departure from the place where the trespassse was committed.

Any

Any thing attempted here against, is void.

Pleas of felony (that cannot be determined, before the Steward, because the felons cannot bee attached, or for other like cause) shall be referred to the common law.

5. C. 3. c. 2 & 10. C. 3. c. 2. Enquests shall be taken there by men of the county about, and by no men of the kings house, except it be in couenants, contracts, & trespasses, when either partie is of the kings house.

5. D. 6. cap. 1. The defendants may auerre that themselves or the plaintife (at the time of the suite commenced) were not of the Kings house against the Record.

13. Ric. 2. cap. 3. The iurisdiction shall not passe about 12. miles about the K. house.

33. D. 8. c. 12. The Lord Steward of the Kings house alone, and (in his absence) the Treasurer and Comptroler of the K. house, with the Steward of the Marshalsey, or two of them (whereof the Steward of the Marshalsey to be one) may without commission heare and determine all treasons, misprisions of treasons, murders, manslaughters, & bloudshed, within the K. house, although the king be removed before. The enquiring and verdict must be by the kings household seruants in the Check Roll.

No Clergie, nor sanctuary, to any that is found guiltie before them.

By reason also of certaine franchises, grow two other Courts of records, which deale within some certaine precincts: a Leet and Court of Pipeowders.

Fin. N. B. 82.

23. E. 3. 22.

61. E. 4. 22.

(a) 22. E. 4. 22.

(b) F. N. B. 161.

Brit. 2 Br. let 39.

(c) 1. H. 4. 14.

3 R. 2. An. 194

(d) 31. H. 6. let 11

(e) 12. H. 7. 18.

(f) 19. E. 3. 21.

An. 194.

(ff) 6 E. 4. 3.

7 E. 4. 21.

A writ of Error

lieth there, and is:

a writ of false iudg.

(g) Stat. 17. E. 4.

ca 2 so reciteth it.

(h) 13. E. 4. 8. Ibid.

(i) 4. M. Dy. 133

A Leet is a Court of Record, having the same jurisdiction within an hundred one, or some lesse precinct, which the Sherifes turne hath in the Countie, the profit of, it beeing to a common person. Therefore it (a) dealeth with offences that are common grievances. And (b) all (but Piers of the Realme) owe suite vnto it, and must be sworn to the Kings Allegiance. And the (c) offender for an amercement shall be distreined throughout the precinct of the Leete. And that as well out of the Land holden of the Lord of the Leete (where the offence was done) as within it. The Sherifes turne as an overseer of this Court, is to (d) enquire whether the tythings be whole, or no: to (e) present defaults that are not redressed in the Leete: And if (for misuser or other cause) the Leet be seised into the kings hands, all the people shall come to the sherifes turne. But (f) otherwise the sheriefe in his turne hath no power to enquire of an offence done within the Leete.

A Court of pipowders is a Court of record, (ff) incident (g) to Faires and Markets: but by (h) custome, a Court of pipowders may bee held, out of Faire or Market: for all actions arising there, by reason of any contract, covenant, trespassse, debt, &c. (i) And the suite must at the same time be commenced.

Statutes.

Statutes.

17. E. 4. cap. 2. made perpetuall, 1. R. 3. cap. 6. No plea shall be holden in Court of Pipowders, vnlesse the plaintife or his Atturney sweare, that the matter of declaration was done in time of the same Faire, & within iurisdiction thereof, but that oath shal be no conclusion to the defendant, but that he may pleade as he might before. E-uery Steward, &c. holding plea contrarie, forfeiteth C.s.

43. Aff. pl. 12.

The King (by commission vnder his letters pattents) but not by writ, may erect other Courts at his pleasure.

Such were Iustices of Eyre, and such Courts of record in Corporations, and other places, by speciall Charter.

The Kings Councell also is a Court, to deale with the punishment of contempts, and called the Starre-Chamber. But this is no Court of Law.

Statutes.

3. H. 7. cap. 1. The Chancellor, Treasurer, and priuie seale, or two of them (calling vnto them a Lord Temporall, and another spirituall of the Kings Councell, and the two chiefe Iudges) may examine ryots, maintenances, &c.

These are the Courts of record. A Court Baron is the Court of a common person. And is for personall accounts vnder the value of xl. s. For a Trespasse lieth not in a

F. N. B. 239. 2 Br.
iur. 1. 99.
F. N. B. 239 g.

Court baron of damages aboue xl s. And a Superfedas lieth to the Sherife, vpon diuers plaints in the Countie Court, euery one vnder xl.s. when all are for one entire debt of xl. s. Or vpon an Action of Couenant brought there to the damage of aboue xl.s.

These cannot be kept oftner then euery three weeks. But so it bee not oftner then from three weeks to three weeks, it may be holden as often as the Lord wil. And therefore to hold of one by doing suite at his court of D. at Mich and at Easter, it is to be entended at his Court Baron, for though a court Baron be commonly holden from 3. weeks to 3. weeks: yet suite of Court may be once, twice, or thrice a yeare, as it is first reserued.

The proceſſe here is by precept to the bailife, good enough, though it bee but by word: Inasmuch as the triall in a Court Baron is all by the Countie, and not by Record: for all is but matter en fait.

The Iutors are the Judges, both in an hundred Court, Countie Court, or Court Baron, and the bailife and sherife are but ministers.

A Court Baron is the Lords, or the Countie Court. The Lords is euher of a particuler mannoꝝ, or of a whole hundred. For a Court Baron is incident to euery (a) mannoꝝ, and to euery (b) hundred.

The hundred Court is that whereunto all the inhabitants within the hundred owe suit. By reason of their tenements. And is in effect

Tr. loc. 32.

21. E. 4. 5.

16. H. 7. 14.

6. E. 4. 3.

F. N. B. 82.

(a) 34. H. 6. 49.

(b) 13. H. 7. 19.

12. H. 7. 17.

effect but a Court Baron.

The Countie Court, which is incident to the Sherife. For the Sherife hath two Courts by the common law, for government of the shire: his Countie Court, (wherein one shall haue remedie against another for any matter betweene them) and the sherifes turne. But the pleas holden before him in the Countie Court are not of Record, though it be by writ of Iustices.

13.H.7.18.

F.N.B.13.

CHAP. 2.

Of Writs Originall.

Of an action, there be two parts, Suite, and Iudgement.

10.El.Dyer 208.
3.EL.Dy.310.

Suite, is the parties dealing in the action: and therefore all that while it is said to depend in plea, but not after Iudgement. The partie that bringeth the action, is called Plaintife in a personall action: demaundant in a reall: he against whom it is brought, Defendant in the first, Tenant in the other: who for their helpe are allowed counsell learned in the Law.

Statutes.

Westm 1. cap. 25. No minister of the King may maintaine another in any action

action in the Kings Court to haue part of the thing, or other profit by couenant vpon paine of punishment at the Kings will.

Statut. 2. cap. 49. None of the Kings officers shall take, or purchase, or bargain for land, tenement, or aduowson whilst the thing is in plea, vpon paine to bee punished at the kings pleasure, as well the purchaser as the other.

Artic. super chart. cap. 11. Neither the Kings officer, nor any other shall do so vpon paine of forfeiting to the King so much of his lands as amounteth in value to that he purchaseth. Any may sue for the King before the Iustices, before whom the plea hangeth.

32 H. 8. cap. 9. None shall, buy, sell, or get, or take promise, or grant to haue, any pretended rights or titles to lands, &c. except the seller, or those (by whom he claimeth) were in possessions, or tooke the profits, by space of a yeare next before, vpon paine that the Seller, &c. shall forfeit the value of the land, and likewise the buyer knowing the same. Provided, hee that is in lawfull possession by taking the yearly profits, may buy, &c. anothers pretended right.

Gloucest. cap. 8. Attornies may be made in all pleas, where appeales lye not.

Stat. cap. 10. In suits, at a Countie, trying, hundred, wapentake, or Court of the Lord.

Statut. 2. cap. 10. A generall Attorny may be made, in all Counties where Iustices

ces do iourney.

3. H. 7. cap. 1. An appeale of murder or death, may be pursued by Atturney.

The suite hath two parts, the beginning and proceeding.

The beginning is the proper butte of the plaintife. And hath two parts.

The first matter of the suite, and originall processe.

The first matter of the suite must alwayes be brought in that Countie where the cause of suite groweth. As actions of

debt vpon an escape, may be brought in the Countie where the arrest or escape was. But not in any other Countie: A (a) trespassse of battery, goods carried away, or writings broken, may be brought in any Countie; for they are not locall. Otherwise it is of trees, or grasse cut downe, they must bee brought in their proper Countie, if it be by bill, the Countie is set at the margent.

14. E. 4. 4.

(a) 2. Mar. Br.]
attains 104.

(b) Br. bill 35.

Statutes.

6. Ric. 2. cap. 2. Debt, account, and all such actions shall be brought in the countie, where the contract was made.

The first matter of the suite is for every man by writ out of the Chancerie, or in Courts where writs be not by plaint or bill: for the King alone by enquire.

In all of the first kind, the plaintife must find suretie by some that will be pledges to prosecute the suite. And so is the forme of euerie

9. E. 4. 27.

Regist. fol. 328 et
per Br. pledg. 29.

euerie originall Si (the Plaintife) *fecerit se securum de clamore suo prosequendo*, The entrie is, *plegy de prosequendo Iohannes Doe. Rich. Roo.* And these may be either to the officer, or to the Court where the suite is. But a poore man in stead of sureties shall giue his faith to prosecute it: whereupon the forme for him is, *Et nisi fecerit & praedict.* (the plaintife) *fecerit se securum de clamore suo prosequendo per fidem suam quia pauper est.*

Writts that begin the last, are originall, or Commissionall.

Originall which appoint the first proceſſe, if the plaintife find pledges returneable in the Kings Bench, or Common place.

(a) 2. E. 3. 4.

(b) 9. H. 7. 161

(c) 3. E. 3. 86.

(d) 3. E. 3. *ibid.*

Altho this that fol-
loweth is the rule of
the Register.

This must be (a) true Latin, for vpon *habeas ibi hos* (b) breue, or *uxori* (c) where it should be *uxor*, and such like, the writ shall abate, and beside (d) formal, As (c) the Generall to be put in demand, and in plaint before the speciall. As land is generall to prece, pasture, wood, ioncarie, marsh, &c. Wood is the generall of all trees growing, and therefore shall bee put in demand before Alders and Willows which are but species of it. The entier shall be demanded before the moyetic or part or parts. The more worthie thing shall be demanded before the lesse worthie, as a messuage before land: for land that hath building vpon it, is more worthie then land without building. A Castle, before a messuage, or a man.

manner (and yet it may bee parcell of a mannor.) But the reason is because a castle is more worthie. As being a place of force and defence against the enemy in time of warre, and against Rebels in time of rebellion, a place in time of peace fit for the correction and imprisonment of great Malefactors, and a magnificent habitation for Noblemen. So in a replevin, if it bee of two Chattels, one quicke and the other dead, the living thing shall be first demanded.

Also it must expresse the name of baptism, and surname, or in lieu thereof, the name of dignitie both of the plaintiffe and defendant. But not the name of his office, which is no dignitie. As pr. q. r. *Iohanni Duci* (a) *Lancast.* is good, but not *Iohanni Rectori* (b) *de D.* without expressing his surname. But when an officer is to sue by reason of his office, as a (a) prebendary (b) person, executor (c) gardein (d) by Knight service, &c. there he must expresse the name of his office: or when one bringeth an appeale of murder, as brother and heire, &c.

Where there be many of one name, diversitie of the names must be put by addition of eigne purlne, &c. else the writ shall abate.

A Corporation may sue by the name that they are corporate, without name of Baptisme or surname, as pr. q. r. *maiori & communici L. & c.* or *Decano et Capitulo D. & c.*

(a) 8. E. 4. 24.
E. 4. 2. 1. saith, the reason is because there are in England no more Dukes of that name: and so it may well enough be knowne of whom it is meant: and also for the solemnitie of the creation. But otherwise it is of knights for there are 1000. Knights in England. Therefore there the writ must be *praprio I. S. militi*.

(b) 27 H. 6. 3.
(a) 13. E. 3. br. 675 in all real.

(b) 12. H. 4. 30. in Assise.
10. H. 7. 5. in wa. 2.
18 Ed. 4. 17. in all mortie.

(c) 30. H. 6. 5.
(d) 9 E. 3. 465.
33. H. 8. Dy. 50.
37. H. 6. 29.
27. H. 6. 3.

Statutes.

1. E. 6. cap. 7. The acceptance of a new name of dignitie shall not abate the writ.

*Reg. fol. 228. &
per Br. pley 29.*

The kings servants in his Court or other by speciall grace of the Chancellour may here bee admitted to finde pledges in the Chancery. And then the forme is, *Quia pred. (the plaintife) fecit nos secures de clamore suo prosequendo pro C. de com. L. et D. de com. S. summones, &c.*

CHAP. 3.

Of Common pleas.

Lit. 116.

Writs original are concerning Common Pleas, or appeales that concerne life.

13. E. 4. 4.

Those that concerne common Pleas, lye not for or against a fem covert without her husband, but (a) an appeale of felonie against her doth.

*(a) 1. H. 4. 5.
Strawf. 62. 4.*

*20. E. 3. Audis.
Quercela 18.*

Many having or giving ioynly cause of action, may sue or be sued together in one which is called Ioinder in action. As A. is bound to B. in one statute merchant, and after A. and diuers others are bound to the same B. in another statute, and B. by one deed releaseth to them all, and after sueth execution severally: They shall ioyne in an *Audis querela*, because of this Ioynt release.

lease. So one *Decies tantum* shall be against 36.H.6.28.
all the Jurors that take money to giue their
verdict, for it is the entire act of all.

Seuerall actions of one nature, as debt,
and detinue (for these are of one nature, in- 3.H.4.13.
asmuch as the warrant of Attorney in a writ
of detinue, and also the essoin. shall bee in
placito debiti) may be ioynded in one origi-
nall with seuerall *precipes*, or commandes-
ments to be executed.

Prerogative.

Here in place of action against the King,
petition must bee made vnto him in the
Chancery, (a) or in (b) Parliament, for (c) (a b) *Stat. prer. 73.*
no action did euer lyc against the K. at the (c) *Stat. prer. 43.*
Common Law, but the partie is driven to
his petition, and (d) if the Escheator seise (d) 34.H.6.5.
goods without cause, or seise the goods of
one outlawed, which outlawry is after re-
uersed, and account for them in the Exche-
quer, the partie must sue by petition for
them. And that (in the case of heredita- 9.H.6.15.
ments) though the King haue granted the
same away. For vpon an office finding 1. S.
(who was attainted of felonie or treason by
matter of record before) to be seised of cer-
taineland, if the King seise and grant it
ouer, yet a stranger that hath right to enter
or bring his action may do neither against
the patentee, but must to the K. by petition.
Wherupon proesse shall goe out against
the Grantee to maintaine his title. As the
king

Stat. prer. 96.

7.H.4.33.

grants ouer his wardship, or any other certaine estate in the land: the *Scire facias* for him that sueth the petition, must be against the patentee, not against the heire, in whose right the king is seised, for hee is not to pleade with the Heire, but with the King or him that hath his interest. And in a petition to reuoke letters pattents made to two &c. a *Scire facias* vpon it: the death of one of the patentees abateth not the petition, for the petition is not sued against the patentees, but against the king, nor they need not to be named in the petition, but in the *Scire facias*.

4.E.4.34.

But whilst personall things seised for the King, remaine in the officers hands, the partie that hath right may trauerse the Records that entitle the King, and so haue his goods againe, or sue the officer, or disturbe him to take the profits: As where it is found that one outlawed in a personall account, was seised of certaine land; and in this case he shall not be driuen to a petition: otherwise it is in case of a freehold, or inheritance.

9.E.4.52.

Petition is a supplication declaring the parties right, where mention must be made of all the Kings title; else it shall abate. For vpon an issue in the petition found against the king, he shall be concluded for euer to claime by any of the points contained in the petition.

CHAP.

CHAP. 4.

Of Reall Actions.

These Writs concerning Common pleas are Reall or Personall. And they both againe are *precipes*, or *Si fecerit te securum*. Lit. II 6.

A *precipe* is that which willethe the Shertife to command the defendant to do somewhat in certayne that the plaintife sueth for, which if he do not, then to serue the first processe. The forme is, *Precipe A. quod reddat B. &c. Et nisi feceris, &c. tunc somon*, &c. And is a *precipe quod reddat* which lyeth for things in render. As of reall things, land and such other things in demesne, rent, corody, &c. of personall things, mony, goods detained, and the like. A *precipe quod faciat* which lyeth for things not in render, whether they lye in Feasaunce as a writ *de consuetudinibus et seruitutibus*, *Secta ad molendum*, &c. or in sufferance, as a *quod permittat*, or in other things of any such like nature.

A *Si fecerit te securum*, is that which willethe the first processe to be serued without moze a doe. The forme is, *Si A. fecerit te securum de clamore suo prosequendo tunc somon*, &c.

Reall actions where a freehold shall be reco- 10. E. 9. 23.

recovered are possessorz or in the right.

Possessorz which are to recover a possession, as all Assises, Writs of Ayell, Be-sayell, and Cosinage.

In the right which are to recover a possession mixt with the right of all which examples do follow after.

F.N.B. 5 b.

And both these may either bee of a possession or right in himsele, or descended from his ancestorz: which we call auncestrell.

Reall actions in the right, are either founded vpon the right, or for the meere right.

Statutes.

Merton cap. 8. Seisin of ones ancestor in a writ of right shall be from the time of Henrie the second.

In a mort dauncestor writ of Niese and of entrie, from the last returne of king John out of Ireland.

In an Assise of Nouell disseisin, from Henrie the thirds first passage into Gascoygne.

Westm 1. cap. 38. Seisin of ones ancestor in a Writ of right, shal be from the time of Richard the first.

In an Assise of Nouell disseisin and *nuper obijt*, from Henrie the thirds first passage into Gascoigne.

In a mortdancestor cosinage, ayell, entrie,

try, and Writ of Niece, from Henrie the thirds Coronation.

32. H. 8. cap. 2. Scisin in a Writ of right shall be within lx. yeares.

In a mortdancestor, or in another possessory action, vpon the possession of his Ancestor or Predecessor, shall bee within l. yeares.

A Writ of the possession of the plaintife himselfe, shall be within xxx. yeares.

An Auowrie or Cognisance, for rent, suit or seruices of the seisin of his Ancestor, or of his owne, shall be within xl. yeares.

Formedon in remainder, reuersion, *Scire facias*, vpon a fine, shall be within l. yeares after the title accrew. If a man prescribe in land, rent, or such like, of the possession of his ancestor, or predecessor, he shall alledge seisin in them within lx. yeares next before the time of the prescription, title, or claime.

1. Mar. cap. 5. The Statute of limitation of 31. H. 8. cap. 2. shall not extend to a writ of right of Aduowson. *Quare impedit*, *Iure patronatus*, Assise de Darrein, presentment, droit de gard of any lands holden by knight seruice, but the time of the seisin alledged shall bee as it was at the Common Law.

These kind of real actions, viz, where the freehold shall be recouered, lye onely against the tenant of the freehold. There-

Lit. 115.

Old tenures fol. 2.

6 E. 6. Pl. 87.

4 E. 4. 32.

19. H. 6. 32.

22. H. 6. 12.

(a) 45 E. 3. 5.

(b) 37 H. 6. 8.

27. H. 8. 30.

vnlesse he were Tenant of the Freehold at the time of the release, for else hee had no cause of any such action against him. Neither is any such action maintainable against lessee for yeares, for he hath not the Freehold. Nor the disseisee cannot haue a *precipe quod reddat* against the disseisor, which is parnor of the profits for yeares onely, notwithstanding the Statute, because by the Common Law, no action lyeth against him. And for this cause also, non tenure of the whole, or though it be but of parcell of the thing demanded. Ioynttenancie with one not named in the Writ. Entierrenancie of the whole, or seuerall tenancie of parcel, when the Writ is brought against two or more, are good pleas in abatement of the Writ.

Statutes.

25 E. 3 cap 16. Non tenure shall not abate the writ, but onely for the quantitie.

37 E. 3. cap 17. No writ shall be abated by knowledge of villenage, if the demandant or plaintife will auerre that hee that alledged the exception was free, day of the writ purchased. **With the freholder, may be toynd in action, any hauing title to enter:** as the morgagor with the morgagee, the Lord with his villeine, but not the disseisee with his disseisor.

41. E. 3. 16.

CHAP. 5.

Of a Plea of Land.

A Reall *precipe quod reddat*, is that which is for reall things in render. And is a plea of land or other such reall *precipe*

A plea of land which is for land or other such things in demesne, where land in certaine is demanded, it must alwayes be brought in a ville, or place knowne out of any ville And not in a hamlet which is parcell of a vill. But personall actions, as trespassse, and such like, may be in a hamlet. So of Dower and Assise, for there no land in certaine is demanded, and also in an assise, he shall recover by view of the Iurie So in a *Scire facias* out of a fine *nuper obijt*, a Writ of mesne, couenant, wast, *quare impedit*. These may be in a Hamlet Otherwise it is of a Writ of right of Aduowson.

A plea of land is a writ of *Entrie*, or a writ shewing the demandants title.

A writ of *Entrie* is that which is to disproue the Tenants possession by the meanes of his *entrie*.

Wherein Tenant in fee simple demanding of the possession of his ancestor shall say in the writ, *Quod clamat esse in disatem suam*. Tenant in Taile or for life, shall not so. But in his declaration set forth

Old N. B. 124.
Fu. N. B. 201
& f.

Fu. Nos Br. ibid.

his speciall estate.

A writ of *Entrie* is either against the first partie, or in the degrees.

Against the first party, when it is against him to whom the first alienation was, or that made the first disseisin.

That in the degrees, is in the *Per*, or in the *Per* and *Cui*.

In the *Per*, when he against whom it is brought commeth in immediatly vnder the first partie, as heire vnto him, or by alienation from him.

In the *Per* & *Cui*, when he against whom it is brought commeth in immediatly vnder the first parties heire or allience: For if more then these two alienations (the *Per*, or the *Per* and *Cui*) passe, the demandant is driuen to his writ of right. And the reason is, that there may be an end of suits. For no Writ of *Entrie* in the *Post* lay at the Common Law. But the same is giuen by the statute of Marlebridge. cap. 29. Which writ of *Entry* in the *Post* giuen now by that Statute, lyeth when hee against whom it is brought commeth in neither in the *Per* nor *Per* and *Cui*, then the Writ shall be *In quad, &c. nisi post dimissionem, &c.* Out of all degrees, as by abatement, disseisin, eschete, recouerie, Election, Succession, Dower, Iudgement, &c. or as the third or more seffices.

The forme of all which is thus In a writ of *Entrie*, in the nature of an *Affise*, against the partie himselfe that did the disseisin,

Præcipe

Precipe A. quod reddat B. unum Messuagium, &c. de quo A. iniuste et sine Iudicia disseisuit B. &c. or in the other forme disseisuit C. patrem, or other ancestor of B. cuius heres ipse est, &c. In the *Ter* thus. *In quod idem A. non habet ingressum nisi per C. qui illud ei dimisit qui iniuste B. &c.* (or in the other forme) *qui iniuste, &c. E. patrem, &c. prædict. B. &c.* In the *Per* and *Cui* thus. *In quod, &c. nisi per C. cui D. illud dimisit qui inde iniuste B. or (in the second forme) qui iniuste E. patrem, &c. prædict. B.* In the *post* thus. *In quod, &c. nisi post disseisinā quam D. iniuste fecit prædict. B. or (in the other forme) iniuste fecit E. patri, &c. prædict. B. &c.* In such like manner it is of a *Dum fuit infra etatem*, and of all other Writts of *Entrie* vpon an alienation *Marleb. cap. 29.*

Writts of *Entrie* grow either without wrong at the first, or vpon a wrong.

Those without a wrong at the first, are grounded vpon a determination of the first estate, or a disability in the person that made it.

Vpon a determination of the estate, either by reason of a particular estate ended, or a condition broken.

Of a particular estate ended is an *ad terminum qui præterijt*, or *Entre ad Communem Legem*.

Ad terminum qui præterijt, is vpon a despoisement by the lessee or a stranger after a Lease for yeares, or life expired, whether the Lessee did alien, or not. But not after the

the death of Tenant in Dower, or by Curtesie, for that is not properly called a Terme

Entrie *ad communem legem*, is when tenant for life, be it his owne or anothers life, tenant in Dower or by curtesie of England both alien and die, and hee in the reuerſion for life, may haue this writ.

Of a condition broken, as *Causa matrimonij prelocuti*. *Causa matrimonij prelocuti*, is for a woman that giueth land to a man to marrie her, and he will not: but it lyeth not for a man that giueth lands to a woman.

Grounded vpon the disability, are a *Dum fuit infra etatem*, and a *Dum non fuit compos mentis*.

Dum fuit infra etatem is by the infant, when he commeth to his full age, vpon an alienation by himſelfe, or his anceſſor, being within age.

But the clause that he is of full age, *viz. qui plene est etatis*, ſhal not be inserted in the writ, if either it be brought in the degrees *Ter, cui, or post*, or vpon the anceſſors alienation.

Dum non fuit compos mentis, is vpon the alienation of himſelfe, or his anceſſors being of non sane memorie.

Those vpon a wrong at the first are either vpon a discountinuaunce, or an ouster.

Vpon a discountinuaunce, as a *Cui in vita*, or a *Sine aſſenſu capituli*.

A *Cui in vita*, for the wiſe after the husbands death vpon his alienation of her ſee ſimple, ſee taile, or freehold, whether
Dower

whether dower or otherwise, or of such a
toynt estate in them.

And in this writ claiming a fee simple,
but not an estate Taile or a freehold, for
there the Writ shall make speciall mention
of the estate, she shall say, *Quod clamat esse
ius et hereditatem suam*, though it be of her
owne possession.

Statutes.

Westm. 2. cap. 3. A *cui in vita* given to
the wife after her husbands death, vpon his
losing of the land by default. And the Ten-
nant that recovered against her husband
must maintaine his owne right.

If it be an estate of fee simple, and she
bring not in her life time a *cui in vita*, the
heire shall haue a *Sur cui vita*. But of an e-
state taile onely, a formedon lyeth in this
case for the heire.

And of this nature is a *cui ante diuorti-
um*, when it is brought by the wife after
dimozement, vpon such an alienation as
befoze.

A sine assensu capituli is for the Succes-
sor of a Bishop, Abbot, Prior, Deane,
Prebendarie, or Master of any Hospitall
after the discontinuance of the Prebende-
sor, viz. when they alien the lands they
haue in the right of their Church, house,
Abbey, or Priorie, without the consent of
their couent, Chapter, or Confrers, &c.

Upon

Upon an ouster, or either upon an intrusion or a disseisin.

That upon an intrusion is called a writ of intrusion, and is for him in the reversion or remainder in fee simple, or for life, not in taile (for hee shall haue a formedon) nor for yeares, because he hath not the freehold, after the death of tenant for life in Dower, or by curtesie.

And if land bee giuen to two, and the heires of one, and hee that hath fee dyeth, and after him tenant for life dyeth. Now the heire of him in the remainder shal haue this writ. And it lyeth also for the assignee of the assignee of him in the remainder.

Upon a disseisin, is when the disseisin is done to him or his Ancestors. As a writ of Entry in the *Quibus*; or which is all one in the nature of an Assise.

Writs that shew the Demandants title, are meere possessorie, or in the right.

Meere possessorie are those which are brought by the next heire upon an abatement after the death of any auncestor, other then his father, mother, brother, sister, uncle, Aunt, Nephew, Niece, for vpon an abatement after the death of any such auncestor, an Assise of mortdauncestor lyeth as shall appeare afterwards: seised in demesne as of a fee simple the day of his death, though hee were disseised the very same day, and so died not seised at all. Of this nature are,

3 writs

A writ of Ayell after the death of his grandfather or grandmother.

A writ of Besayell after his great grandfather or grandmother.

A writ of Cosinage after the death of his great great grandfather or grandmother, or any other collateral Cousin, as the great great grandfathers brother.

Statutes.

Westm 2 cap. 20. In a Writ of Cosinage, Ayell, and Besayell, the point shall be enquired whether the demandant be next heir as well as in a mortdauncester.

In the right, is that which is to disprove the right of the Tenant, and is a writ of right in his nature, or a *Præcipe in Capite*.

A writ of right in his nature which sheweth how the demandants right is growne. And is a forimdon or a writ of Eschete and Dowry, *unde nihil habet*.

A Forimdon is a *Præcipe quod reddat*, entitling the partie by the forme of the gift.

And is a forimdon in remainder, or a forimdon in reverter: for a forimdon in descender lyeth not at the Common Law, but is given by the Staute of Westm 2. cap. 1.

A forimdon in remainder is for him in the remainder for (a) life, or in (b) fee upon a Lease for (c) life expired. For after an estate

Old Nat. Br. 2 Br.
Formd 69.

3. El. Pl 235.

(a) Old Nat. Br.

148. 149.

(b) F. N. B. 217. d.

(c) Fuz. ibid.

*Fin. N. Br. 319. e.
30. E. 1. form. 65.*

estate taile expired, it lay not at the Common Law: because it was a fee simple, whereupon a remainder could not depend.

A forzordon in reuerter is for the donee after the issue in taile determined, as at the Common Law, if the donee alien before issue had, and after die without issue: or if he haue issue, and after he or his issue dye without issue. Contrarie it is if he had issue and then had aliened, and dyed without issue.

A writ of Eschete is for the Lord that hath a seigniorie in fee, or for life upon an eschete.

Old Nat. Br. 6.

Dower, unde nihil habet, is a writ for ones dower, which hath receiued no part at all of it.

Statutes.

Statutum 1. cap. 48. A writ of dower *unde nihil habet*, shall not abate though she haue receiued part of her dower before the writ purchased, vnlesse it were of the same partie against whom the writ is brought, and in the same Towne.

Br. pro. qd. reid. 35

A writ of dower lyeth against garden by knight seruice, though he be not tenant of the freehold.

Fin. Nat. Br. 3. f.

A praecipe in capite is a praecipe quod reddat, for the meere right: and therefore lieth onely for Tenant in fee simple of lands holden in Chiefe.

Statutes.

Statutes.

Walslm 2. cap. 4. In place of a writ of right, a *Quod ei desorceat* is giuen to Tenants for life or in taile vpon loosing by default.

CHAP. 6.

Of a writ of right of ward, and a Writ of right Sur disclaimer.

Other reall *præcipe quod reddat*, are those which are in respect of a seigniorie, as a writ of right of ward, and a writ of right sur disclaimer.

A writ of right of ward, is to recover the wardship. If of the bodie, it lyeth both for gerdein in soccage, and by knight service: If of the land, it lyeth onely for gerdein by knight service.

Fit. 2. Na. Br. 139.

Statutes.

Marleb. cap. 7 In a writ *De communi custodia*, if the desorcer come not at the grand distresse, the same Writ shall be reiterated, as oft as well it may bee within halfea yeaere following, and euerie time the

the Writ read, and Proclamation made in the Countie Court, if he come not to answer, nor the Sherife find him within halfe a year, he shall lose the custodie. Sauing his action another time, if he haue right.

Westm. 2. cap. 35. In a Writ of ward of land, or heire, or both, either of the parties dying before the plea determined, a reformation shall bee. And in the grand distresse day must be giuen that three Countie daies may be holden before the returne, in euerie of which Proclamation shall bee made, whereupon the defendant not appearing, Iudgement shall be giuen for the Plaintife. Sauing the right of the defendant, if afterwards he will claime it. So shall it be done in a writ of eiection of gard.

A writ of Right sur disclaimer is for the Lord to proue the Lands to be holden of him, when in an action where the seruices should bee recovered, As in an auowrie made vpon the Tenant for them: for there he shall recouer the seruices inclusiue, inasmuch as he is to haue a returne in an Assise or *precipe quod reddat* of rent (for there the seruices are expressly demanded) but not in a *per que seruitia* (for there no seruices but an Atturment onely is demanded) nor in a Iustification, in a repleuin, or an auowrie in an action of Trespasse (for there the defendant shall neuer haue a returne, nor recouer his seruises expressly nor includedly, the Tenant in Court of record, viz. in the

13. H. 7. 27.

ibid.

5. E. 4. 2.

13. H. 7. 27.

15. E. 4. 29.

Old Nat. Br. 162.

the Common place, but not in Court Baron or Countie Court. For there if the Lord make auowrie vpon the Tenant, and hee disclaime to hold of him, the Lord shal be amerced, **disclaime to hold of him.**

And if in this writ of right sur disclaimer, he can proue the land to bee holden of him, he shall recouer the land it selfe for euer: because the disclaimer is of record. *Ibid.*
Therefore by such a disclaimer, he is barred of all possessorie actions for the seruices, as an Assise, Cessauit, rauishment of ward, and such like: but not of a Writ of Eschete, Right of ward, right of customes, and seruices, &c. And though the Lords distresse & *16.H.7.1.*
auowrie were lawfull, yet the Tenant so disclaiming, shall recouer dammages of him, for the disclaimer giueth the Lord a better aduantage, *34.6.3. Dis. 24.* **viz. the Land it selfe.** *16.H.7.1.*

Statutes.

Westm. 2. cap. 2. If the Tenant disclaime in Countie Court, or other Court not of Record, the Lord may remoue the plea before the Iustices to cause it to be of Record. So as he may haue a Writ of right sur disclaimer.

Glocest. cap. 4. & Explanat. cap. 4. when land is giuen in feefarme, rendring or doing so much as amounteth to the fourth part of the value of the Land, if he (whose land is charged) let it lye fresh by two yeares, so as no distresse can be found in it, **not**

nor render, or do that which is contained in the writing, the other shall recover the land by a Cessavit. But the donee coming before Iudgement, if he render the arrears and damages, and find sufficient to do from thenceforth, that which is contained in the writing, shall retaine his land.

Westm. 2. cap. 21. If a man detaine from any Lord his service due by two yeares, the Lord shall recover the land by a Cessavit. This lyeth also for the heire of the Lord against his Tenant, his heires, or those to whom he alieneth the land.

Westm. 2. cap. 41. So if religious houses that have land given them, &c. withdraw the almes, &c. by two yeares, the donor shall have the like action.

CHAP. 7.

*Of a Writ, De consuetudinibus
& Seruitijs, and Secta ad
molendinum.*

A Real precipe quod faciat is either to recover hereditaments, or some real thing that concerne them.

Those that are to recover some hereditament demanding of ones owne seisin are in the *debet* and *solet*, demanding

manding of the ancestoz seisin, they are in the *debet* onely, and then are in all respects as writs for the meere right, that is to say, are triable by battaile, or grand Assise

These are either in respect of a seigniorie, or to recover some other hereditament.

In respect of a seigniorie, as a writ *De Consuetudinibus et Seruitijs*, and a *seffa ad molendinum*.

A writ *De consuetudinibus et seruitijs* lyeth for the Lord that hath an estate for life or a greater estate, in the seigniorie, and is deforced of his seruices

Fin. N. B. 151. b.

Seffa ad molendinum lyeth for the Lord, when the Tenants that hold of him by grinding their corne at his Mill, withdraw their suit, and grind elsewhere.

Fin. N. B. 122. m.

Statutes.

Marleb. ca. 9. The Proceffe either where the Lord distreineth against the forme of this Statute, or the Tenants withdraw the suits due, is attachment, (wherein onely essoin is allowable, and deliuerance of the distresse incontinently to remaine so till the plea be ended) *Venire facias*, and the grand distresse. At which day not appearing, the distresses deliuered shall so remaine till recouerie in the Kings Courts, til which time the Lord (in case he bee defendant) must distraine no more, and the Plaintife shall be dismissed without day, if the defendant come to answer, and the matter passe a-

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gainst

gainst him, the Plaintife shall recouer damages.

This of damages to be recovered (in case where the Tenant is defendant) is to be vnderstood of withdrawing the suit from the Lord himselfe, and not from his predecessors.

CHAP. 8.

Of a Quare impedit, and a quod permittat.

FOR other heraditaments are a *quare impedit*, and a *quod permittat*.
Fi. Nov. Br. 33. b. A *quare impedit* lieth vpon a disturbance, where he, or his ancestors, or those from whom he claimeth, hauing at any time befoze presented to a Church, himselfe is now disturbed.

Statutes.

25 E. 3. cap. 3. Stat. 3. Vpon the Kings collation or presentment to a benefice, his title shall bee well examined, and beeing found before Iudgement vnttrue, or vniust, the collation or presentment shal be repealed. And the parron or possessor which sheweth the false title, shall haue thereupon Writs out of the Chancerie, as many as are needfull.

Stat.

Marleb. cap. 12. In a *Quare impedit*, and Assises of Darrein presentment, day shal be giuen from xv. dayes to xv. dayes, and from three weeks to three weeks. And in a *quare impedit* the proceffe shal be a summons, attachment or grand distresse.

Westm 2. cap. 5. If Coparceners make partition to present by turne, and one of them present accordingly, he that is afterwards disturbed shall haue a *scire facias*, (and not be driuent to his *quare impedit*) and recouer his presentation with damagess.

An auowson (after the death of one that hath presented) being assigned in dower, or to Tenant by Curtesie, and they present, the heire if he be disturbed after their death shall haue a *quare impedit*, or darrein presentment at his pleasure. So of an auowson demised for life, yeares, or in taile, when 6. moneths passe hanging a *quare impedit* or darrein presentment, so as the Bishop presenteth by lapps, the patron shall recouer damages to two yeares value of the Church. Otherwise damages to halfe a yeares value: The disturber not being able to render damages, shall in the first case haue imprisonment of two yeares, in the second of halfe a yeare.

A Quod permittat lyeth for one that hath Common of pasture for his beasts, being disturbed by a stranger, so as he cannot vs his Common.

Fit. No. 27. 123.

CHAP. 9.

*Of a Curia claudenda, Writ of
Covenant reall, mesne and
warrantia charta, where
of fines.*

Those that are to recover some reall thing concerning hereditaments are a *Curia claudenda*, or a *Covenant reall*, and other writs sounding in that nature.

(a) F.N.B. 128. 4.

(b) F.N.B. 127.
b. & 128. 4.
F.N.B. 146 f.

A *Curia claudenda* lyeth for a (a) freeholder, not for a Tenant for yeares, when one that hath a Close next adioyning to him, which he should keepe enclosed, will not do it. A writ of *Covenant reall*, lyeth vpon a *Covenant* to do a thing reall, as to leuie a fine of lands, &c. Writs in the nature of a *covenant reall*, are a writ of *mesne* and a *warrantia charta*.

F.N.B. 135. m.

A writ of *mesne* lyeth for the Tenant against the *mesne*, when the Lord paramount both distreine the Tenant whom the *mesne* ought to acquit.

Statutes.

Westm. 2. cap. 9. The Tenant distreined
by

by the chiefe Lord may haue a writ in the Countie where he is distreined against the mesne, who hauing land in that Countie, and not appearing till the grand distresse, day shall bee giuen in the grand distresse, so as two Counties may bee holden before the returne. Wherein the Sherife shall proclaime that he come to answer the Tenant at the day. At which day if he come not, he loseth his seruice, and the Tenant shall hold of the chiefe Lord by the same seruices that the mesne held. The chiefe Lord may not distreine the Tenant of the demesne if he offer the seruice due. And exacting of him more then the mesne ought to doe, that Tenant shall haue the remedy that the mesne might haue.

Vpon a returne that the mesne had nothing to be summoned by an attachment shall go out, and vpon a *nihil* returned, the grand distresse with proclamation as before.

The mesne hauing no land in that countie but in another vpon such a returne by the Sherife, the partie shall haue a Writ Iudiciall to summon the mesne in that Countie where it is testified that hee hath lands, and both there and in the other Countie shall proceed to the grand distresse, and proclamation and Iudgement as before.

The mesne coming into the Court and
T 8 acknow-

T 3

acknow-

knowledging, or being adiudged to acquit his Tenant, and not doing it, the Tenant shall haue a Iudiciall Writ of acquittance. Whereupon if the mesne come in, and the Tenant can auer that he hath not acquitted him, he shall bee satisfied of his damages, and be quit of the mesne, and hold of the chiefe Lord, and if the mesne come not at the first distresse, then another distresse shall go out, and proclamation, and so proceed to Iudgement as before.

This statute extendeth only where there is but one mesne betweene the Lord that distreineth and the tenant, the mesne of full age and the Tenant, tenant in fee simple.

Warrantia Charta lyeth for him that hath lands or Tenements warranted vnto him, either by feoffement, (a) releafe, or confirmation with clause of warrantie, where his hereditaments are liable from the time of the action brought. Therefore it is pollicie for one to bring his *Warrantia charta* before he be sued. For vpon vouching when he is once sued, he recouereth in value but such lands as the vouchee had at the time of the voucher.

And vpon these writs of (a) Conent reall, (b) mesnes (c) warrantie of Charters, as also vpon a Writ of (d) customes and seruice, a fine may be leued.

A fine is the acknowledging of an hereditament in the Kings Court according to the covenant, to be his right that both

com

F.N.B. 134. d.

(a) 12. H. 4. 22.

Fin. Nat. Br. 134. k.
01. H. 6. 22.

(a) 42. E. 3. 5.

(b) T. H. Est. 7.

(c) *Idem per Dy.*

379.

(d) 21. E. 3. 18.

complainte, He that complaineth is called
plaintife, and the other deforceant. And
this acknowledging of it to be ones right
is called, *A fine sur conueyance de droit*,
But if the right be acknowledged to bee his,
as that which he hath of the gift of the
Conisor, it is called a *Fine sur consance de
droit come ceo quel ad de son done*. The forme
of a fine is, *Hec est finalis concordia facta
in curia dn'i Regis, &c. unde plac' conuenti-
onis pendet in ead' curia sc. qd. prad' I. S. recog-
nouit tenementa prad. esse ius ipsius A. &c.*

A fine may be leuied vpon a writ of war-
rantie of Charters, for it is in effect but a
covenant betweene the parties before the
Iustices, and entred of record. And before
the Statute of *Westm. De his que concordata
sunt* (which giueth a *scire fac.*) if the fine
were not executed, the partie should haue a
writ *De fine frasto*, and recouer dammages
onely, which proueth that a fine is but a
covenant of record.

Where one of the must needs haue such
an estate at the time of the fine leuied, for
against the plea that the parties to the fine
had nothing &c. it is no good replication,
that the parties were seised &c. for if one
of them were seised it is sufficient. Which
forme of pleading (*viz* that one of the
parties was seised) proueth that if he haue
left an estate for yeaes the fine is voyd.
And a fine of the land it selfe will passe a-
way a reuersion depending vpon an estate
estate for life. And this is as it were a

T 4

feoffement

42. E. 3. 5.

40. E. 3. 7.

23. H. 6. 57.

27. H. 8. 4.

37. H. 6. 5.

7. Eliz. T. 1. 360.

(a) Lit. 12. is that
in a feoffment
made en pais. &c.
where a freehold
passeth, he is by deed
or without, there
must needs be livery
of seisin, which
words (en pais) are
put to exclude fines
that are feoffments
of record.

(b) 18. E. 4. 22.

(c) 36. H. 8. Br.
fines 118.

feoffment of record. So as a freehold passeth thereby without any livery of seisin. That where of the fine is levied, or any thing contained in it, as a rent Common, &c. out of the land, an estate for yeares, or other estate in the land, &c. may be granted backe againe to the Conisoz by the same fine. And this is called a fine *sur grant & render*. The forme whereof is: *Et pro hac recognitione, &c. the conisee concessu*, to the conisor, *praed' tenem' cum pertinu' & illa eiredidit in ead' curia haben'*, to the conisor, &c. for none can take the first estate but those that are named in the Writ of covenant. But euerie stranger may take a remainder. As A. leuieth a fine to B. who rendreth it backe to A. and E. his wife, &c. In this case E. hath no estate, for she was not party to the Writ.

Statutes.

27. H. 1. Stat. 1. cap. 1. *De finibus levatiis*. Exception against a fine, that the plaintifes or defendants, or their ancestors, were alwayes seised of the lands contained in the fine shall not from henceforth be admitted in the parties to the fine or their heires.

The fines shall two dayes in the weeke be publicquely and solemnly read, and all pleas cease in the meane time.

5. H. 4. cap. 14. All Writs of Covenant and other, whereupon fines be leuied, the
Dedi-

Dedimus potestatem, and all knowledges and notes of the same, before that they bee drawne out of the Common bench by the Chirographer, shall be enrolled in a roll to be of record for ever Out of the which execution shall be had, if the notes or fines shall be imbezilled.

23. *Chiz. cap. 3.* Euerie Writ of Covenant, or other writ whereupon any fine is leuied, the returne thereof, the *Dedimus Potestatem* and returne thereof, the concord, note, and foot of the fine, the proclamations and the Queenes siluer: Also euerie writ of Entrie in the *Post* or other writ, whereupon any common recouerie is suffered, the Writs of summons *ad warrantizandum*, and the returnes of all these writs, and euerie Warrant of Attorney may at any mans request be enrolled Which enrolment shall be of as great force to all purposes in Law as the things themselves if they were extant.

No fine, proclamation, or common recouerie shall be reuerfed by writ of Error, by reason of false Latine, rasure, enterlyning, misentring of the Warant of Attorney, or of any proclamation misentring, or non returne of the Sherife, or by reason of any other defect of forme in words, and not in matter of substance.

Fines executed bind all persons if claime be not made within a yeare, therefore it is called a fine, Quia finis finem litibus imponit. Lit. 104.

7. Ed. 1. 37.
 Contin. cl. 7.

imponeret. And in a fine vpon a render, if the Conisee sue not execution within the yeare but after the yeare c, by a *scire facias*, no strainger need to lay to his claime.

Statutes.

34. Ed. 3. cap. 18. The plea of non claime, of fines from henceforth to be leuied, shall not be any barre.

34. Ed. 7. cap. 24. Euerie fine after the ingrossing shall be proclaimed in the Court, the same Terme and the three next, foure seuerall daies in euerie Terme, all pleas ceasing the whilest. Which proclamations so made, the fine shall conclude all priues and strangers, except women couert, persons within xxj. yeares of age, in prison, out of the Realme, or if non sane memorie (being no parties to the fine.) So they or their heires take their action or lawfull entrie within five yeares after those imperfections remoued. Sauing to all persons and their heires (other than parties) the right claime and interest which they haue at the time of the fine. So that they pursue it by action or lawfull entrie within five yeares next after the proclamations. And sauing to all other persons such right, title, claime, and interest as first shall grow, remaine or come to them after the proclamations, by force of any matter before the fine. So they take their right according to the

the law within 5. yeares next after it grow,
&c. And those that bee couert Baron, &c.
at the time when it groweth, &c. that they
or their heires take their actions or lawfull
entrie within five yeares after those imper-
fections remoued.

Sauing also to all not parties, nor priuies
the exception that none of the parties, nor
any to their vse, had any thing in the lands
at the time of the fine.

31. H. 8. cap. 36. All fines leuied by any
person of xxj. yeares of age of lands en-
tailed before the same fine, to himselfe or
his ancestours in possession, reuerfion, re-
mainder or vse, shall immediatly after pro-
clamaton made, be a sufficient bar against
him and his heires, claiming onely by such
entaille, and against all other claiming on-
ly to his vse, or the vse of any heire of his
bodie.

1. H. 8. cap. 7. All fines whereupon pro-
clamations be not, or shall not bee duely
made (by reason of the adournement of a-
ny Terme by Writ) shall bee as good as if
any Terme had beene holden from the be-
ginning to the end, and proclamations
therein made according to the statute.

31. Eliz. cap. 2. Proclamations of fines
shall be onely foure times, viz. once in the
Terme wherein the fine is ingrossed, and
once euery of the three Termes next after.

A femeconert toyning with her husband
in

L. 149.

15.E.4.1.

43.E.3.15.

37.H.6.5.

in a fine it bindeth her for ever. There-
fore here the Justices must examine her
to see that she do it willingly. For if she say
vpon her examination, that the husband did
imprison her to leuie the fine, this fine is
not to be receiued. A grant by fine of a leig-
norie, rent charge, rent seck, remaynder, or
reuerſion, is presently good. Same for
bzinging actions that runne in pſuitte be-
tweene the Tenant and him. As an action
of Waſte or *Cofimili caſu*, when the reuer-
tion of Tenant for life is granted by fine,
and after Tenant for life alieneth in fee, a
Writ of Eſchete or Ward when the Te-
nants ſeruices are granted by fine, and af-
ter the Tenant dyeth without heire, or his
heire within age. But in theſe caſes hee
may enter for a forfeiture or eſchete, and
ſeiſethe Ward: and ſhall alſo be receiued
vpon default of Tenant for life.

CHAP. 10.

Of an Aſſiſe and Iuris vtrum.

Fo. No. B. 177. a.

Thus much of reall pſicipes. Reall
ſi fecerit te ſecurum, are an Aſſiſe, &
Iuris vtrum, or other.

An aſſiſe is ſuch a reall pſies
meerly in poſſeſſion.

In

In Assise of ones owne onely possession is an assise of nouell disseisin, or an assise of Ransoun. In assise of nouell disseisin is for a freeholder against his disseisor, whether it be of land or rent, or the Waylife of the disseisor if himselfe cannot be found. And beeing of a rent charge, or rent seck, all the Tenants of the Land, wee call them terretenants must be named, and the whole land put in view, though hee were disseised by one Tenant onely. If the Lord distreine the Tenant too often for the rent or seruices: that is to say, such as too great a distresse may bee taken for, as rent seruice, &c. but not for fealtie suite of Court, &c. for which there cannot be any too great distresse. And whether it bee the Lord mediat or immediate, the Tenant may haue an assise: the reason is, for that the tenant cannot make rescous.

31. ff. Pl. 31.
32. ff. Pl. 10.

Statutes.

Magn chart. cap. 12. Assises of mortdauncester and of nouell disseisin shall not be taken but in their proper Countie by the Iustice of Assise, and if they cannot bee determined there, they shall be determined by the same Iustices in their iourney: vpon a difficultie of any points, they shall be referred to the Iustices of the Common place and there determined.

Westm.

Westm. 1. cap. 18. 13. C. 1. Stat. de Mercator. 27. C. 3. cap. 9. Tenant by elegit by Statute marchant, and by statute staple, shall haue an assise or redisseisin.

Westm. 1. cap. 47. The gardein or chiefe Lord enfeofing one of parcell of land in his hand, the heire may presently haue an assise of nouell disseisin against the gardein and tenant, and the gardein shall lose the ward, and all the remnant that he holds of the heires for life.

Westm. 2. cap. 25. A man shall haue an assise for estouers of wood, profit to be taken in wood of nuts, accornes, and other fruits of Corodies, deliuerie of corne, and other vittailles and necessities of money to be receiued yearely in a place certaine of Toll, trorage, passage, pontage, pawnage, and such like, to be taken in places certaine. Custodies of woods, parks, forrests, Chases, warrens, gates, and other Bailiwicks, and offices in fee. And in all these cases the writ shall be *de libero tenemento*. Likewise an assise is giuen for common of Turue land, fishing, and such like. Commons which a man hath appendant to a freehold or without a freehold by speciall deed, at the least for terme of his life.

Westm. 1. cap. 24. An Assise giuen against

gainst Escheton, Sherife, or other Baylife of the King, that seiseth any lands by colour of his office, without speciall warrant or commandement, or certaine authoritie that belongeth to his office so to doe, and double damages to be recovered.

Westm. 2. cap. 25. When Tenant for yeares, or in ward alieneth in fee, the remedie shall be by an assise, as well against the feoffor as the feoffee, during the life of either of them. If by the death of either of them, remedie faile by that Writ, then the remedie shall be by a writ of Entrie.

7 Ric. 2. cap. 10. An assise of nouell disseisin of rent out of Tenements in diuerse Counties, shall bee in the confine of the same Counties.

Westm 2. cap. 25. In an assise, if one named a disseisor do personally alledge an exception whereby the taking of the assise may be deferred, as that another time an assise of the same land passed betweene the same parties, or that there is a Writ of higher nature hanging, &c. and hereupon voucheth Rols or records to warrantie, and at the day giuen him, he faile of that hee vouched, he shall be adiudged a disseisor without taking an assise, render double damages, and haue a yeares imprisonment. If such exception be alledged by the Baylife in
the

the absence of his Master, the taking of the assise, and iudgement shall not thereupon be delayed. But his master afterwards offering to proue before the same Iustices, such an exception shall haue a *venire facias* for the record, which if the Iustices see, might haue been auailable to haue barred the plaintife, they shall award a *Scire facias* against him that recouered, wherein the defendant shall recouer againe his seisin and damages, with his double damages sustained since the first iudgement and imprisonment of that partie that recouered. In like manner if the defendant, against whom an assise passed in his absence, shew any deed, release, whereupon the Iurie were not, nor could not bee examined, because there was no mention of them in the pleading, the Iustices vpon sight of those writings shall award a *Scire facias* against the partie that recouered, and cause the same Iurors to come before them. And the writings being proued true by their verdict, or by the enrolment of them, like punishment shall be as before.

Westm. 2 cap 30. The Iurors shall not be compelled to find a disseisin or no disseisin, but may giue their verdict at large.

Merton cap 3. A man disseised recovering his seisin by assise of nouell disseisin, or confession of the partie, and hauing the same deliuered him by the Sherife, if he be
again

againe disseised of the same Tenement, by the same disseisor shall haue a writ of redisseisin to command the Sherife, taking with him the keeper of the Pleas of the Crowne, and other lawfull Knights in proper person to go to the land, &c. and by the first Iurors and other lawfull men to make enquire. This must not be without special commandement of the king.

Westm. 2. cap. 26. A writ of redisseisin shall lye for them that haue recovered by default, redicion, or otherwise, without recognition of the assises and Iuries.

Berton. cap. 3. The redisseisor shall be imprisoned.

Marleb. cap. 3. And not deliuered without speciall commandement of the King, and besides shall pay a fine.

Westm. 2. cap. 26. He shall answer double damages, and not be repleuiable by the common writ.

Westm. 2. cap. 3. In fine, writs of redisseisin must be enrolled in the Chancerie, and a *transcript* thereof shall bee sent into the Exchequer in the end of the yeare. **An assise of nuisance is for him whose freehold is spoiled by any nuisance,** for if he haue but a lease for yeares in the land, hee shall not haue an assise of nuisance, but an action vpon his Case.

F.N. 2. 1842.

The fourth Booke Statutes.

Statute 2 cap. 24. Giueth an assise of nufance against him to whom the Tene-ment is alienated after the nufance is made

6. Ric. 2. cap. 2. The plaintife, if he will, may haue a writ of nufance in the nature of an assise, determinable before the Iustices, of one bench or other, or before the Iustices of assise.

An assise of his ancestors possession on-ly called an assise of mortdancestor, is for the next heire vpon an abatement after the death of his father, mother, brother, sister, vncle, aunt, nephew, or niece: for of other aunccestors, a writ of Ayell, Befayell, or Co-sinage, and not a mortdancestor lyeth, who was seised in demesne as of a fee (a) sim-ple the day (b) of his death, though hee were disseised the very same day, and so dyed not seised at all. But vpon lands giuen to one and his second wife (he hauing a sonne by a former) and the heires of their two bo-dies, their sonne cannot haue a mortdan-cestor, (after the death of his father ouerli-ving the second wife) for hee is not next heire, but his elder brother: and therefore, by the Common Law, hee was driuen to a Formedon endescender, which was nothing else but a Writ formed vpon his case. So if the aunccestor were seised in taile, the re-mainder to his right heires, a mortdaunce-stor lyeth not, for there, of the demesne he is seised

The forme of the writ F.N.B. 195. 14. El. Dy. 310. is that the 3 poynts to be inquired in a Mortdancestor (all expressed in the writ) are 1. whether the ancestor were seised in fee day of his death. 2. whether the demandant be his next heire. 3. whether the ancestor died within fifty years next before the writ pur-sued.

(a) F.N.B. 196. k

(b) F.N.B. 195. d

4 El. Pl. 239.

F.N.B. 195. d.

seised in taile, not in fee.

Statutes.

Magna charta, cap. 12. vide supra.

Marleb. cap. 16. A mortdancestor giuen against the Lord that will not render the land to his ward at full age.

Westm. 2. cap. 4. If a woman hauing no right recouer dower against a gardein, the heire at full age shall haue a mortdauncestor against her.

Gloucester. cap. 6. All the heires whereof one is sonne or daughter, brother or sister, nephew or niece, and the other in a further degree shall ioyne in a mortdauncestor.

Gloucester. cap. 3. The heire shall haue an assise of mortdauncestor, if Tenant by curtesie alien and leaue no assets.

An assise which may bee either of his owne or his ancestors possession, called an assise of darrein presentment is vpon a disturbance when (a) himselfe or his ancestor did last present: and therefore lyeth for (b) tenant in years as well as for him that hath an estate of inheritance, or for life.

(a) F.N.B. 314.
Old N.B. 13.
(b) F.N.B. 313.
5 H-7.16.

Statutes.

Magn. chart. cap. 12. An assise of darrein presentment shall bee alwayes taken before

F.N.B. 487.

before the Iustices of the Common place. 1
Marleb. cap. 12. and westm 2. cap. 2. 2
Iuris utrum is such a reall plea founded by-
 on the right for a Parson or Vicar upon
 his p[re]decessors alienation.

Statutes.

14. E 3. cap. 16. A *Iuris utrum*, and other
 Writs according to their case, given to
 Parsons, Vicars, and Wardeins of Chap-
 pels, Prouosts Wardens and Priests of per-
 petuall Chauntries for lands in frankal-
 moigne, as well as to Parsons of Churches,
 or I rebends.

C H A P. I I.

Of a Writ of Partition, Nuper obijt, and a Quo iure.

This is the nature of an assise, and
Iuris utrum. Those that follo[w] are
 either a *Particione facienda*, & nu-
 per obijt, (which both lye betwene
 priuies in blood) or a *Quo iure*.

4. E. 53, 65, 71.

Lit. 98.

3. E. 3. partia. 11.

A *Particione facienda* lyeth betwene co-
 percenors to compell partition to be made,
 but not betwene Ioyntenants, or Tenants
 in Common, yet partition made there by
 assent betwene them is very good, but the
 husband

husband of one of the co-parceners coming to be Tenant by curtesie, such a Writ lyeth for the other Copercener against him because hee commeth in of the state of his wife, but not for him, against the other. **Therefore here for equalitie of partition, things that otherwise cannot may be granted without deed:** As a rent, reuersion, seigniorie, way, auowson, composition to present by turne, &c.

2. H. 7. 5.
11 H. 4. 3.
28 H. 6. 3.
21 E. 3. 7.
28 H. 8. D. 19.

Statutes.

31. D. 8. cap. 1. Ioyntenants, or Tenants in Common of an estate of inheritance, may be compelled to make partition, and afterwards shall haue aide to deraigne the warrantie paramount, and to recouer for the rate as coperceners (after partition) should.

32. D. 8. cap. 32. Ioyntenants, or Tenants in Common for life or yeares, or where one or many hold for life or yeares with another that hath the inheritance, may be compelled to make partition. Such partition shall bee preiudiciall to none but the parties, their Executours and Assignes.

Nuper obiit lyeth against one priuie in blood, that entreteth after the death of the ancestor, that dyed seised in demesne. And therefore beeing but to trie the priuie F.N.B. 197.

F. N. B. 118.

priuitie of bloud, view, nor voucher, lyeth not, neither is non tenure any plea.

¶ Quo iure lyeth for the tenant of the land when one challengeth common, there to trie whether in right hee ought to haue any or no.

CHAP. 12.

Of Debt and detinue, whereof a Writ of Annuitie.

Thus farre of reall actions. A personall action is that where damages are to bee recovered, for at the Common Law neither shal (a) any but the Plaintife recover damages, (b) nor damages lye but in personall and mixt actions, not in reall, as Dower writs of Entrie, sur disseisin, Ayell, Cosinage, &c. for in them damages are given by speciall Statutes. which being but once suspended, or but against one, is gone for euer, and against ali. As if the Creditor bee made an Executor to his debtor and once administer, or take to wife one of the Executors of his debtor, she hauing administred before, the action of debt is gone for euer. So if two bee bound in an obligation to a fern sole, and after she taketh one of the obligors to husband, the whole dutie is extinct.

Executors bringing an action, must do

(a) 22 H. 6. 27.

(b) Br. Costs 29.

(c) 21 E. 4. 3.

(d) 11 H. 4. 83.

(e) 8 E. 4. 3.

21 E. 4. 23.
26 H. 7. 4.

it in all their names, as well of those that refuse administration, as of the rest. But an action may bee brought onely against those that do administer.

33 H. 6. 35.

Statutes.

9. E. 3. cap. 3. Stat. 1. In a writ of debt brought against diuers executors, they shal haue but one essoine before apparance, and one after apparance. He or they that do first appeare in the Court at the grand distresse, shall answer to the Plaintife, and the Plaintife (if it passe for) shall haue iudgement and execution of the goods of the Testator against all named in the writ, as well as if they had all pleaded. In personell actions growing in respect of a possession in Common, Tenants in Common are in all respects as Jointenants, for they must ioyne in an action of Trespasse, for a trespassse done vpon their ground: in an action of account, against their Bailife of a wood, and if one of them dye, the suruior shall haue an action of the whole. So if Tenant for life the reuersion to two sisters commit waste, one sister dyeth hauing issue, and the Tenant commit wast againe, the issue and her Aunt shall ioyne in an action of wast, and the Aunt sole reconer treble damages for the wast done in her sisters time.

33 H. 6. 12.

38 E. 3. 7.

45 E. 3. 3.

In personell *precipes*, damages onely shall be reconered where the thing cannot be had: for (a) damages shall not bee reco-

(4) 1. E. 3. 6.

(b) *Br. Detin. 48.*

uered in a Writ of Detinue, if the thing it selfe may be deliuered, damages (b) I say to the value of the thing demanded: but damages for the detaining shall.

Personell praece quod reddats are debt and detinue.

Debt, when any thing is due vpon a contract.

(a) *50 E. 3. 16.**11 H. 7. 5.*(b) *50 E. 3. ibid.*(c) *19 H. 8. 8.*(d) *10 H. 7. 5.*(e) *ibid.**15 ELPL. 441.*(f) *47 E. 3. 33.*(b) *ibid.*

which if it be (a) money due from one to another in their owne right, is in the *Debet* and *Desinet*, otherwise in the *detinet* onely. As in debt, for the rent (b) of Wheate, and Hens reserued vpon a lease for yeares, or of any Chattell, quicke or dead, in debt, (c) by or (d) against an executour for rent, vpon a lease of land, though it be behind after the Testators death: or (e) vpon a former recouerie of debt or damages against executors, or for arrerages found in an action of account brought by them, for all is in the right of their Testator. But against an heire vpon an obligation, &c. of his ancestor, it lyeth in the *debet* and *detinet*, for the assets which he hath in his owne right, maketh it his proper debt. So for an (g) Abbot or Prior vpon an obligation of the predecessor, and though he be behind himselfe onely, and against husband (h) and wife vpon a recouerie of debt and damages against the wife whilest she was sole.

Statutes.

Magn. Chart. cap. 8. The pledges shall be

bee free so long as the principall debtor is sufficient. And answering the debt, shall haue the lands and rents of the principall till they be satisfied.

2. Ric. 2. cap. 12. No Wardein of the Fleet shall suffer any prisoner in execution to goe out of prison by mainprise, baile, baston, without making gree to the party, vnlesse by Writ, or other commandement of the King, vpon paine to lose his office, and the party to haue a writ of debt against him.

33. H. 6. cap. 10. Euery obligation taken by a Sherife or his ministers by colour of their office, of any person in their Ward by course of Law, shall bee by the name of their office, and vpon condition that the prisoners appeare at the day and place mentioned in the Writs, Bills and Warrants, taken in any other forme, it shall bee void.

32. H. 8. cap. 37. The Executors or Administrators of him that hath any rent or fee farme in fee in taile, or for life, shall haue an action of debt for the arrerages, in the Testators life time against the tenants that should then haue paid it. Or may distreine (and make auowrie vpon his matter) in the lands so long as they remaine in the possession of the said Tenant, or of any claiming onely from him.

A hus-

A husband seised of any such estate in any rent or fee farme in his wiues right, shall (after her death) himselfe, his Executors, or administrators, haue the same remedie for arrerages due in her life.

So of him his Executors and administrators, that hath a rent or fee farme during anothers life, & *cessi qui vi*, die, the same being vnpayed.

Prerogative.

10. El. Tl 321.

When any of the Kings goods come into a subiects hands, whether by matter of record or enfait, so as hee is accomptant for them, his land all times after is chargeable for the same, and subiect to the Kings seisure, into whose hands soeuer it come, whether by descent, purchase, or otherwise.

Statutes.

34. H. 8. cap 2. The land of the heires of high Collectors of any Taske, Subsidie, or lone, and of the receiuors of Courts, shall be chargeable therewith, as well that the heire hath by descent in fee taile, as in fee simple. And also that that is giuen him by the collector or receiuor couenously, and thereupon the heire may haue an action of debt against the Executors and administrators of his auncestor, wherein no essoine, protection, or wager of law is allowable. And haue execution of the goods of the auncestor, being

being in their hands at the time of the action brought.

13. *Eliz. cap 4.* The lands, profits, and hereditaments of euery accomptant, or of him that receiueth money for the Queene, or her Successors, to be imployed to the vse of the Queene, shall bee extended (in the nature of a Statute Staple) for the payment of the arrerages. Or the Queen if he do not satisfie within sixe moneths after the arrerage found, may sell his land, and the party may haue the surplufage to bee deliuered vnto him, by him that receiued the money vpon the sale, without further warrant: this sale to be of any land, whereof it is found by inquisition, that the accomptant taketh the profits: which inquisition, if it bee not true, the partie griued after trauerse of the office, and that found for himselfe, shall haue his land againe without any petition, liuerie, or ouster lemaine. If any such buy land with the Queenes Treasure, since the beginning of her raigne, and pay not the arrerages as before, the Queene shal seise & retaine the land according to the rate that the partie had it. This sale extendeth not to those officers that haue vsed to disburse the arrerages about their charge, or offices which continue, except the Queene command present payment to bee made, and then they shall haue sixe moneths as before.

This Statute extendeth not to the accomptants

tants, whose yearely rent, or whole receipt from the beginning exceedeth not C C C L nor to Sherifes, Eschetors, Baylifes of liberties. Also the sureties shall bee ratable according to their habilities charged for the surplusage onely which remaines not satisfied by such sale of the lands of such officers.

39 *Eliz. cap. 7.* The former Statute of 13. of *Eliz.* shall extend to sales to be made after the death of the Accomptant or debtor, and to an accompt made, or debt knowne within eight yeares after his death.

And none shall bee taken a debtor but such officers and accomptants (in this act mentioned) as vpon their accompts finished (all reasonable petitions being allowed) shall remaine debtor vpon the foot of the accompt.

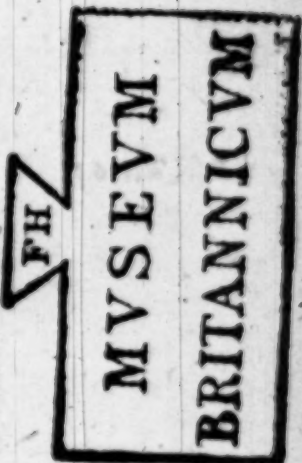
After one yeare after the accompt made or knowne (all reasonable petitions allowed) the Queene may by her Letters Patents sell so much as shall suffice to satisfie it, if any land which he had at any time since 2. April. 13 *Eliz.* or which otherwise are to be sold by the entent of 13. *Eliz.* The ouerplus, if any bee, shall bee redeliuered without petition or fee. Euery such sale shall bee as good as if the partie himselfe had made it for money, or other valuable consideration by bargaine, and sale, deed enrolled, scoffement, or recouerie with voucher. And shall barre the partie and his heires, and all claiming vnder him, after he shall

shall be debtor or person accomptable, and all whom he might haue barred by any recouerie, and all whose lands are to be sold by the entent of 13. *Eliz.* And shall be good against the Queene and her Successors, and all claiming vnder them for any charge or incombance to the Queene or her Successors by the partie.

Provided, it shall not auoid any lease by the Queene in other sort then it should at the Common Law, if the Queene were satisfied.

This act and 13. *Eliz.* shall extend to vnder collectors of Tenthes and Subsidies of the Clergie, shall not impeach any assurance made before this Parliament, *bona fide* nor any lease of xxj. yeares, or three liues whereupon so much yearly rent shall bee reserved yearly payable, as hath been within xxj. yeares before, nor customarie estates made according to the custome.

And of this nature is a writ of annuity, which lyeth for him that hath an annuittie (a) in fee for life, or though it bee but for yeares be (b) it money or other things, as clothes, bread, &c. And is in the debt for them (c) all: that is to say, for any other thing as well as for money, not in the detinue contrary to an action of debt. Detinue when any thing is withholden, which is called *De catalis reddendis*: if it be for writings, it is called *De chartis reddendis*.



(a) F.N.B. 153.4

(b) F.N.B. 153.6.

(c) F.N.B. 153.6.

OLD N.B. 62.

OLD N.B. 65.

CHAP. 13.

*Of an Action of account, and an
action of Covenant.*

Personall *præcipe quod facias* are an action of account, and an action of Covenant.

An action of accompt which is for an accompt to be made: as if one bee made a Baylife of a mannor, &c. then it is against him as Baylife; if receiuors of his rents, debts, &c. then as receiuror: if both Baylife and Receiuror, then as Baylife and Receiuror.

F. N. B. 116. p.

Statutes.

Marleb. cap. 23. Attachment given in an action of accompt against Baylifes that withdraw themselves, and haue no lands nor tenements to be distreined by.

Westm. 2. cap. 11. Hee to whom the accompt is to be made, may assigne Auditors to take it, who may immediatly commit to the next gaole the accomptant (beeing found in arrerages) till hee fully satisfie whereupon the accomptant finding himselfe griued, may bring the matter by a *Scire facias* before the Barons of the Eschequer.

Trist

Prerogative.

The King may haue it against execu- 24.112.
tors. And so can no other man.

An action of covenant which is for a co-
nenant, that is to say, an agreement by deed
to be holden.

CHAP. 14.

Of writs where the peace is not
broken.

Personell si fecerit se securum are of
things done without force, or where
force is coupled with it.

Of those without force, some goe
not so farre as breach of the peace,
others do breake it.

Those that breake not the peace, are
these that follow.

Rationabili parte bonorum, for the wife &
chil dren of one deceased to haue their part
of the goods.

Valore maritagij for gardein in Knight
service, when the heire at full age refuseth
to satisfie him for his marriage: and there-
fore there in the writ are no words of the
heires intrusion into the land.

F.N.B. 141 d.

A writ of forfeiture of marriage is to re-
couer the double value against such an heire
marrying himselfe within age, without the
Lords assent, and at full age putting out
the Lord.

F.N.B. 141 b.

Enter-

Entrusion of ward, when the heire of land by Knight service entreth, and putteth out the Lord, whether during his nage or after his full age, if the heire both intrude and denie the value of the land also, then this writ of Intrusion of ward may be brought for both.

F.N.B. 140.

Eiectione custodie for any gardein by knight service or soccage, against a stranger, electing him of the land, or bodie of the heire, or both.

F.N.B. 197.

Quare eiecit infra terminum for lessee for yeares, against the lessee in fee, or for life of his lessor, for in such a case an *Eiectione firme* lyeth not against the feoffee or lessee for life, because hee is not the person that doth oust him, but his feoffor. And therefore was this writ deuised. And here the terme it selfe shall be recouered, if it be not past, as in an *Eiectione firme* that commeth after.

So is the Law now
adjudged.

Trespasse vpon the case of things not against the peace, as *Assumpsits* for an assumption to be perfozmed, and such like; and this lyeth not against Executors.

38.H.6.g.

Here and in all other actions of Trespasse vpon the case, the writ must comprehend all the matter of substance, and which is trauerfable as clearly as the count, valeffe it be the day, quantitie of the land, or such like.

CHAP. 15.

*Of Trespases vpon the case, against
the peace, deceit, and conspiracie.*

The other that breake the peace but
not vi, are called trespases against
the peace.

And of this kinde specially are
an action of deceit and conspiracie
in the nature of such a trespassse. An action
of deceit is vpon any deceit committed,
where if it be vpon a non summons in a
plea of land, whereby he loseth the land by
default, or such like, it must be brought dur-
ring the life of the Sommoners, but not
when all the Sommoners and veighors bee
dead.

33 H. 6. 47.

In a writ of deceit the Plaintiffe shall
reconer all that hee hath lost. As if it bee
brought vpon a recouerie in a *quare impa-*
dit, &c. then damages: if in a formdon then
the land onely, but no damages, for he lost
none in the formedon before.

33 H. 6. 10.

Conspiracie in the nature of a trespassse
is vpon conspiring by many to preiudice
a man wrongfully. As if men conspire to
endite one, because he arrested not a felon
that passed by the Towne of M. And there-
by they cause him to bee endited and amer-
ced in the Leete of R. and F. and to bee
X taken

F.N.B. 116. 3. 4.

taken and imprisoned for this amercia-
ment till hee bee thereof acquitted in the
Leet. Or if men affirme and say to one A.
that he hath right to such land, and procure
him to sue B. tenant of the land, whereby
B. is compelled to sell other of his lands for
defence of this. Or if men procure one to be
endited for hunting in a Parke, whereby he
is taken and imprisoned, and put to expen-
ces till hee haue acquitted himselfe of this
trespasse.

CHAP. 16.

Of Trespasse whereof Parco fra- cto, rescuous, and eiectione firmæ.

Such are those without force: coupled
with force is an action of Trespasse,
for a trespasse done whether in goods
or vpon his land. And so if it be of a
bodily trespasse, as batterie, &c. But in
maime and rape it is called an appeale. In
action of Trespasse brought in a Court bar-
ron, whether by plaint in the Court of a
manner, hundred, or Countie Court, or by
writ in the County Court, must not suppose
it to be done by force and armes, for then a
superfedeas lyeth shewing that a plea of
Trespasse *quare vi & armis* shall not be hol-
den in a lower Court then before the King
of

*F.N.B. 239.d.
F.N.B. 35.f.
86.d.*

(v) F.N.B. 239.d.

or other Iustices by his commandement;
 And therefore no *Capias* lyeth there either
 in Proceſſe or execution, but in Courts of
 Record onely. 3 H 6. 54.

Statutes.

Marleb. cap. 38. A writ of Trespaſſe is
 giuen to the Succesſors (in religious hou-
 ſes) for goods taken away from the Prede-
 ceſſor, whether hee commenced action in
 his life, and died without Iudgement, or
 though he commenced no action.

And likewise to recouer their owne ſci-
 ſin againſt intrudors in time of vacation,
 wherein damages are alſo giuen.

Marleb cap. 4. If the Lord diſtreine for
 his ſeruices when none are due, yet he ſhall
 not bee puniſhed by fine and ranſome, but
 onely be amerced.

Welſh i. cap. 20. Treſpaſſors in Parkes
 and ponds attainted at the ſuite of the par-
 tie, beſides making large amends according
 to the Treſpaſſe and fine, at the Kings plea-
 ſure, ſhall haue three yeares imprisonment,
 and find good ſuretie not to commit the
 like treſpaſſe. And if he cannot find ſuretie,
 he ſhall abiure the Realme. Being a fugi-
 tiue, and hauing no land nor tenement,
 whereby to be iuſtified, he ſhall be proclai-
 med from Countie to Countie, and if hee
 come not therevpon outlawed, if none do

sue within a yeare and a day, the King shal haue the suite.

5. Ric. 2. cap. 7. None shall make entrie into lands or Tenements, but where entrie is given by Law. And in such case not with strong hand nor multitude of people but in peaceable manner.

He that is conuict of the contrarie shall be imprisoned, and thereof ransomed at the Kings will.

15. Ric. 2. cap. 2. At all times that such forcible entries bee made, and complaint thereof commeth to any Iustice of peace, he shall take sufficient power of the Countie, and go to the place, and if hee find any that hold such place forcible after such entrie made, they shall be taken and put into the next gaole, there to abide, conuict by the Record of the same Iustice, till they haue made fine and ransome to the king.

8. H. 6. cap. 9. The like for them that make such forcible entrie into lands or other possessions, or them hold forcible.

And whether the parties bee present or voided before the Iustices comming, yet he shall enquire of the matter by the people of the same countie in some conuenient place, and shall cause the Tenements so entred or holden to be reseised, and restore the partie (so put out) into full possession.

The partie put out or disseised in this manner, shall recouer treble damages against the disseisor, or any feoffee comming

in by fraud.

31. *Elis. cap. 11.* No restitution vpon an enditement of forcible entrie, or holding with force, shall be good, where the partie hath beene in quiet possession three whole yeares next before the enditement, and his estate not ended.

Merton cap. 6. A lay man rauishing, or marrying a Ward within 14. yeares of age shall be imprisoned, besides losse of the value of the marriage.

westm. 2. ca. 35. One that hath no right, taking away the Ward, shall be imprisoned two yeares, rthough he restore the child not married, or satisfie for his marriage. Not restoring him vnmarried, or not be able to satisfie for his marriage, (in case hee haue married him) he shall abiure the Realme, or haue perpetuall imprisonment. The forme of the writ both when the heire is in the same Countie or carried into another, is there set downe.

If the defendant there come not vpon the distresse, he shall be outlawed.

The plea shall proceed though the heire dye. If the Plaintife die before the plea determined, &c. a resommons shal be against his executours or heires (if the executours haue no assets) to satisfie the value of the marriage.

Speciall actions of Trespas are these *F. N. B. 100.*
that follow.

De parco facto for taking a distresse of beasts and other things distreined for da-

mage fefant, or for rent & fervices behind, not of the powne, whether common powne or other place that is a lawfull powne, and whether hee that fo brake the powne bee proprietor of the beafts, or no. And this lyeth for him that diftreined, not for him whose the clofe was, where one diftreineth and putterh the beafts by licence into his friends Clofe, for it is not the powne of the owner of the foile, but of him that did diftreine, and the other fhall haue an action of Trespaffe, *Quare claufum fregit*.

F.N.B. 101 f.
F.N.B. 102 f.

Rescous for taking fuch a diftreffe away before it be impounded. And here the partie must needs haue poffeffion of the beafts, or things fo recuffed, for if he be difturbed before he do attach or diftreine them, a writ of rescous lyeth not, but an action vpon the cafe.

(a) F.N.B. 220 b.
(b) F.N.B. 220 f.

Ei ctione firme when (a) leffee for yeares of land is ousted, be (b) it by the leffor or a stranger, where the terme it selfe fhall bee recovered if it be not past, as in a *Quare eicit infra terminum* before.

CHAP. 17.

Of Appeales that touch life.

These are the Common pleas, an appeale that concerneth life is the parties (a) pivate action, prosecuting al so (b) for the crowne in respect of a felonie, be

(a) Lit 116.
(b) 2 El. Pl. 476.

be it a (a) petie Treason, or other felonie whatsoeuer. But for (c) high Treason no appealelyeth.

(c) 33 H. 8. Dy. 50

Appeales of the death of a man are giuen to the heire of the partie slaine, for the husband shall not haue an appeale of the death of his wife, but her sonne. So the puisne brother of the whole blood shall haue the appeale, and not the elder brother of halse blood. But the elder of the whole blood shall.

(c) 33. H. 8. D.
Stamp. 50.

7 E. 4. 15.

Statutes.

Glocest cap. 9. An appeale of the death of a man must be brought within the year.

Magnichart. cap 33. A woman shall haue none but onely of the death of her husband.

2. E. 6. cap. 24. Enditement or appeale good in the Countie where he dies, though the poysoning or stroke were in another.

3. H. 7. cap. 1. One acquitted vpon an enditement of murder, or manslaughter, or as accessarie shall go at large till the yeare and day be passed, within which time no appeale may be brought (if no Clergie be had before) and all aduantages therein saued, as if the acquitall had not beene.

So against the accessories, though the principall were attainted at such suit of the King.

CHAP. 18.

Of writs of right Patent.

Old N.B. 12. A
Writ of right patent.
F.N.B. 35. of Tre-
pass.
F.N.B. 2 f. of a
Writ of right patent.
F.N.B. 36. of Tre-
pass vicontiel.

62.43.
85 H.6.5.

THUS far of originall writs, Com-
missionall are those which are not
returnable but determinable be-
fore the parties to whom they are
directed. And are but in effect com-
missionarie, or meere commissions: of the
first sort are those that give authoritie to a
Court baron to hold plea where the Justices
are the Judges, not the Sherife or steward.
These are a writ of right patent or a Jus-
tices. In both which the same course is
holden, as in those that went before, viz.
pledges as before, count as in them, and the
same both processe that is in the writs ori-
ginall of that nature. As in a writ of right
patent, a *præcipe* in the nature of a grand
cape and petit cape. Triall by battaile or
grand assise, &c. in Iustices or vicontiel,
writs of debt, accompt, &c. Somons, of tres-
passe, &c. attachment, but not a *capias* in a-
ny case, for that lyeth onely in a Court of
record. Also many actions of one nature
may be ioyned in one *Iustices* with severall
præcipes. So in plaints, bills, &c.

A writ of right patent is a writ for the
(a) meere right of Tenements holden of a
common person, as land, (b) auowson, or
rent (c) service: but not (d) rent charge,
rent

(a) F.N.B. 1. b.
(b) F.N.B. 30.
(c) 14 E. 3 dr. 31.
(d) *ibid.*

rent secke, or a (c) Common, to be brought in the Lords Court of that mannor. But (g) if hee hold no Court, or otherwise (h) yeeld his Court to the King for that time, at the prayer either of the Tenant or demaundant, then it may be in the Kings Court with this clause, *Quia B. capitalis dominus nobis inde remisit curiam.*

(c) F.N.B. 1. b.

(f) Old N.B. 1.

(g) F.N.B. 3 c. & 8. a. b.

(h) F.N.B. 2. f.

And this must shew by what service the land is holden. The writ remaineth alwayes with the party himselfe So doth no other writ originall. If one priuie in blood not past the third degree, enter after the death of the auncestoz that died in demesne not seised As where a man lettereth for life, and dyeth in the life of the Lessee, hauing many coheires, and after that Lessee for life dyeth, and one of the Coperceners entreth into al, or where the ancestor is disseised and dieth, and one copercener entreth into all, there such a writ of right patent, for the other coparcenar, or for the elder brother, if the yonger enter into all, is called a writ of right *De rationabili parte terre.* And therein the grand assise nor battaile shall not bee ioyned for the priuie of the blood: nor view nor voucher lyeth, neither is non tenure any plea, for it is to trie the priuie of blood, as a *Nuper obiit* that went before.

F.N.B. 1. d.

F.N.B. 4.

(b) Old N.B. 10.

F.N.B. 9. b.

Old N.B. 10.

Ibid.

8. 61.

F.N.B. 9. b. *It herb also where the Ancestoz died seised.*

F.N.B. 9. b.

Old N.B. 10.

F.N.B. 9. d.

Old N.B. 10.

F.N.B. 9. d.

F.N.B. 9. d.

F.N.B. 197. d.

7. H. 6. 8.

F.N.B. 6.

A woman that hath receiued part of her dower shall haue a writ of right of dower patent for the remnant, whereof she is to bee endowd, wherein the same things

things are to be observed that were in a writ of dower, *unde nihil habet* before.

CHAP. 19.

Of Iusticies.

A Iusticies is a writt that giveth the Countie court power to hold plea. And therefore is called a *Uicountiel* writt, of this sort are.

F.N.B. 124 b

1 An assise of petie nuisance is where a mill, or such like, is leised to ones nuisance.

All of them are comprehended in these verses,

*rica ca gultum ges lendia
Fab, fur, porta domus, vir, gut, m,
murus ouile:*

Et pons, traduntur hec vicecomitibus.

F.N.B. 143...

Hid.

2 For admeasurement of things, as, Admeasurement of dower by the heir, when his garden or himselfe endowed the wife in his nonage of more than she ought. But by this writ she shall have no new land assigned to her in dower. But onely there shall be taken from her so much of the land as amounteth above the third part of the land, whereof she ought to be endowed.

F.N.B. 125, b & d

Admeasurement of pasture by a commoner whom another commoner wrongeth by putting in more beasts into the Common then hee should, whether the Common

Common be appendant or appurtenant, so it be to a certaine number, **wherein all the Commoners** as well those that haue not surcharged, as those that haue, and also the Plaintiffe himselfe **shall be admeasured** But it lyeth not for the Lord against his Tenants surcharging, for he may distreine the surplusage for damage feasant. And as some say, may haue an assise, for it is a disturbance of the profit of his soile. Nor for the Tenant against his Lord surcharging, but he shall haue an assise of common.

Statutes.

westm. 2. cap. 7. A gardein may haue a writ of admeasurement of dower, and the heire also at full age, if the gardein follow it faintly.

In Writs of admeasurement both of dower and pasture after the great distresse, Proclamation shall be made two Countie dayes, whereupon if the partie come, the plea shall proceed: if not, admeasurement shall be made in his default.

westm. 1. cap. 8. When the same partie after admeasurement another time surcharge, a writ to enquire if that second surcharge shall go out either iudiciall, if the former admeasurement were before the Iudices, or otherwise originall out of the Chancerie. And the beasts surcharging the pasture, or their value, shall be answered to the King.

F.N.B. 77.4.

F.N.B. 77.6.

F.N.B. 77.4.

old N.B. 73.

Ibid. 73. & 74.

F.N.B. 66.4.

(a) F.N.B. 66.5.

(b) F.N.B. 67.

F.N.B. 68.4.

4 H. 6. 30.

J.N.B. 70.6.

3 *Natiuo habendo* for the Lord that hath an inheritance in any villeine, but not an estate for life or yeares, for this writ is in his nature a writ of right to recouer the inheritance of his villeine when his villeine departeth away from him. And here if the defendand plead that he is frank, the Shereife cannot proceed.

4 *Rationabilibus diuifis* for that Lord whose land or waste hath by little and little bene encroched vpon within time of memozie vntill now, by a Lord whose seignorie adioyneth in another ville, against the Lord so encroching. But if the encrochment bee at once, whether now or before time, there an assise of nouell disseisin lyeth, and not this writ.

5 *De homine replegiando*, for one imprisoned, or in prison detained where he should not. As being baileable, or claimed as (a) a villeine, or in (b) ward, where in deed he is frank out of ward.

6 *De repleuin* for goods or chattels distrained, which according to the nature of the plea ministred by the parties, groweth to be either a reall or personell plea, as vpon property claimed then is it personell, if the defendand auow the taking, for seruices or rent behind, &c. then it becommeth reall, &c. and as strong as a *precipe quod reddat*, inasmuch as he is to haue a returne. And therefore he shall in that case haue aide before any plea pleaded, as in a *precipe quod reddat*. And this may be both by Writ and plaint

plaint in any Court baron, as well as in the Countie Court. And beeing by plaint, though in the Countie Court, it shall not proceed if any thing touching the freehold come in question, as if the defendant auowing for damage fesaunt, the Plaintife iustifieth by reason of Common of pasture.

F.N.B. 204.

Upon the pluries not served by the Sherife, his power is determined, and the parties shall plead in Bank.

2 H. 7. 6.

Statutes.

Marleb. cap. 21. The sherife may repleuin beasts not onely without but within a libertie also, if the baylife of the libertie will not.

Westm. 2. cap. 2. The sherife or baylife shall take pledges of the plaintife not only *de prosequendo* before they make deliuerance of the beasts, but of returning of the beasts if a returne be adiudged, hee that taketh pledge otherwise shall answer the price of the beasts. Vpon a returne awarded to the defendant, the writ *De returno habendo* shal haue this clause, (that the sherife shall not deliuer them without writ, wherein mention shall be made of the iudgement.) And therupon the plaintife (if he will) may haue a iudicial writ to the sherife to deliuer him the beasts.

Vpon a returne awarded, after which if a returne another time be awarded, there shall be no more repleuins. And if vpon his default the second time, or otherwise the defendant

pendant be adiudged to haue a new return,
the distresse shall remaine yereplegiabie.

4. *Deputies to
make Repleuius.*

1. & 2. Ph. & Ma. cap. 12. Euerie Sherife
of a Shire (being no Citie) shall at his first
Countie day, or within two moneths after
receit of his pattent, proclaime in the Shire
towne foure deputies at the least, dwelling
not past twelue mile one from another,
which in his name shall make repleuias as
the sherife might do himselfe.

(a) F.N.B. 151.b.

Ibid. 123.a.

Ibid. 123.f.

Ibid. 135.m.

Ibid. 148.b.

Ibid. 152.b.

Ibid. 119.g.

Ibid. 138.b.

Ibid. 117.b.

Ibid. 145.g.

Ibid. 85 f 86 g. In

Ibid 86 For they
are at a Commissio
in effect. And the
Sherife may deter-
mine them by En-
quest, according to
the consue of the co-
mon Law.

F.N.B. 110.b.

Ibid.

7 Many of the actions that went be-
fore, both for Real things to be done as,
*Consuetudinibus & seruitijs: secta ad molendi-
num. Quod permittat: mesne: Dowry, unde
nihil habet:* and also personall actions, as
Annuittie, debt, detinue, accompt, conent,
trespasse, to what summe soener, may as
well be brought in the Countie by Iustit-
cies, as to bee returnable in the Common
place.

CHAP. 20.

Of meere commissions.

Mere commissions are these that
follow: Being all of them to be
directed to choise persons, such as
it shall please the King.

Ouer and terminer to heare &
determine vpon some heynous trespasses
committed, as rebellious assemblies, insur-
rections, and such like. And theie are called
Iustices

Iustices of oyer and terminer.

Statutes.

2. E. 3 cap. 3. It shall be granted onely to Iustices of the one Bench or other, or to Iustices errants.

In these and such like commissions lye properly a writ of Association, and *Si non omnes*.

Association is a writ for other to be associate into their company, as fellow Iustices together with them, and may bee directed to the Iustices themselves to admit them, or to the parties that shall be so associate to signifie their association. That (a) to the partie is patent. The (b) other to the Iustices to admit him is alwayes close.

Si non omnes is a writ for the rest to proceed, although the other come not. To bee directed as well to the partie to be associate as to the other Iustices. Patent (c) to the partie, close (d) to the Iustices.

Ad quod damnum to enquire what hurt it may be to the King, or countrey, or any other for the King to grant such or such a thing, as a licence to alien in mortmaine, or to alien lands holden of the King in chiefe: or to grant liberties to any Citie or such like.

Perambulacione facienda to enquire of the bounds of two Seignories or Townes, where an encroachment by little and little is supposed to haue beene made. And this

F. N. B. 111. b.
(a) F. N. B. 111. d.
F. N. B. 113. a. in
an assise
(b) F. N. B. 111. d.
F. N. B. 111. a.

(c) F. N. B. 116.
(d) F. N. B. 111.

Old N. B. 74

must bee by the mutuall assent of both the
Lords. But if such encroachment were at
once, whether now or heretofore an assise
of nouell disseisin lyeth, and not this writ.

CHAP. 21.

Of Plaints.

So farre of Writs, it followeth to
speake of Plaints and Bills. Both
being in such Courts as hold plea
without originall writ.

A plaint is in matters that con-
cerne common pleas.

A plaint of Trespasse brought in a court
baron, whether mannor, hundred, or coun-
tie Court, shall not proceed if the freehold
come in question. But a suit by writ in the
Countie Court may. Therefore in such case
vpon a plaint in the Countie Court, the
partie hath no remedie, but a writ of Tres-
passe vicontie, and thereby the Sherife
may determine the issue, though the free-
hold come in debate. But that is no remedie
in other Court Barons.

22. Affpl. 64.
21. Iur 98.
14 H. 8. 19.
Ibid.

CHAP.

CHAP. 22.

Of Bills.

A Bill is in pleas of the Crowne. Is an appeal of felonie, mayme, rape, &c. may be by Bill before any one Coroner of the Shire, as well as by writ originall, finding first sureties to the Sheriffe.

Stamf. 64.

(a) Stamf. 33. a
(b) Stamf. 64.

One whose attendance is necessarie in any Court, as the officers and Attornies there, shall sue and bee sued in forme of plaint, without writ originall, which is called a Bill priuiledge. But albeit the Cooke or Butler of a Iudge, or other officer of a Court shall haue their priuiledge if they be sued els where, yet a Bill lyeth not against them: But against the officers and Attornies it doth, for they are members of the Court, and their attendance necessarie. And they shall be foreiudged of their office, if being demanded to doe them they make default. But an Attorny in the Kings shall not be sued by Bill, for no Attorny is there of record, nor his presence necessary. Otherwise it is in the Common place.

6 E. 43.

CHAP.

CHAP. 23.

Of a Quo warranto.

Prerogative.

10 H. 7. 14.

The King hath a speciall meanes of suite for trying of the right of franchise vsurped vpon him, called a *Quo warranto*: and is to be brought before the Iustices of Oyer. Therefore here the allowance of a franchise before them, bindeth the King Otherwise it is vpon a suite in the common place.

Statutes.

*Quo warranto in
Iustices circuits.*

18. E. 1. A Statute of, *Quo Warranto*. Pleas of *quo warranto* from hencefoorth shall be pleaded and determined in the circuits of the Iustices.

18. E. 2. Stat. of *Quo warranto*. A publicke *proclamari fac'*, shall bee awarded to those that claim liberties to know by what warrant they claime them, wherein they shall haue a warning of fortie dayes. The partie that claimeth liberties beeing before the King, it shall not bee in default before any Iustices of their circuits. And beeing impleaded before one or two Iustices, the same Iustice before whom he is impleaded, shall

shall saue him harmelesse before the other. If he come not at the day, the liberties shal be taken in the Kings hands in name of a distresse, and when they appeare, be repleuied vpon their demand. In which repleuins they shall answer immediately.

If their ancestors died seised, then the K. shall haue a summons for them to appeare before the King, or his Iustices of assise: at which day if they come not, nor be assoygned before the King, and the King do tarric longer in the same Shire, such order shall be taken as in the circuits of the Iustices. And if the King depart from the same Shire, they shall bee adiourned vnto short dayes, and haue reasonable delayes according to the discretion of the Iustices, as it is vsed in personall actions.

CHAP. 24.

Of Offices for the King.

These are the suits that every one may haue. Enquiries for the King is when matter for the King is found by a Iurie called an enquest of office, whether the enquirie bee by officers themselves, as Sherifes, Esche-tors, Coroners, &c. *virtute officij*, or *virtute breuis*, or commissions to them directed. And here the full number of twelve is not of necessitie requisite, but may bee some-

21 E. 3. 2.

3 H. 7. 3.

4 H. 7. 7

times more or lesse.

An enquire is an office of presentment. An office which findeth matter to entitle the King to some possession, for an office is a title for the King, but finding but for a common person it is but an evidence.

If such an office bee found for hereditaments, and the King entitled by matter en fait, that is to say, by no other record but that onely, as if the office find that I. S. the Kings Tenant died seised, the partie may either traaverse, to say, I. S. was not seised, or confesse and auoid it by saying, that himselfe was the Kings Tenant, and disseised by I. S. and so I. S. died seised beeing in by disseisin, &c. And this is called a *monstrans de droit*. But if the office entitle the King by matter of record, as that I. S. was attainted of Treason, and ceised of certaine lands there onely, a petition lyeth to the King, because this is a double matter of record, and therefore neither can the partie traaverse it by denying I. S. to be so seised, nor haue his *monstrans de droit* to shew that I. S. did disseise him, &c. or that he enfeofed I. S. vpon condition, and that I. S. brake the condition before the attainder. All this is to be vnderstood so long as the record of the attainder continueth in his force. But the party may traaverse the attainder well enough, as to say, *multiel attainder*. i. that there is no such attainder, and vpon that being found for him he shall haue the land, without being drlven to his petition, otherwise

wise not, and the reason is because the office entitling the King by a matter of record, this title cannot be avoided, but by as high a matter, and not by the plea or allegation of the parties: upon as high a matter of record to avoid the office, as the office itself, a man may traverse it though the King be entitled by double matter of record. As being found by office that I. S. was attainted of Treason by Parliament, & his lands forfeit, and that hee was seised of B. acre, whereby the King seisseth it. Now if another act of Parliament restore the heire to all the lands whereof the ancestor was seised, and adnull the aunccestors attainder, his heire shall have this by way of plea without petition.

If the office be for personall goods, the party may likewise have a traverse or plead any matter unto it, and so have his goods againe, unlesse the escheator have accounted for them. And that though the office find the Kings title to be by matter of record: as that I. S. was attainted of felony or treason, or outlawed in debt or trespassse, & was at the time possessed of a horse, or of such and such goods, wherein truth the property was unto a stranger. That stranger may have a traverse.

The King upon office finding for him, if his entry be lawful, and the possessions to be had at the time, is presently in possession, as in wardship or escheate of land found by office: but an office finding that the kings

Y 3

tenant

4 E 4 34.

(a) Ibid.

34 H. 6 5.

4 E. 4 ibid.

14 H. 7. 33. 35.

3. Inf. Trin. 54.

tenant hath ceased, or his tenant for life committed waste, vesteth no possession in the K. for his entry is not lawful, but he is driven to *suca scire facias*. So if an office entitling the K. to thinge nor manuell, that is to say, whereof no profit is to be taken, forthwith vntil they fall as a rent comon, & at this vesteth no possession till the day. Also he shall be answered of all the mean profits fro the time of his title. As vpon an alienation in mortmaine found by office, from the time of this alienation appearing of record, vpon the kings letters patents adnulled for insufficiencie from the very time of the grant.

41 E. 3. 11.
31 H. 4. 5.4 E. 4. 34.
3 H. 4. 5.

An Escheator here may find offices *ex officio*, as well as *virtute brevis*, or *Commissionis*. But not of outlawry of felonie, or such high matter of record without warrantie paramount and certification by writ of record. Those *virtute brevis* or *commissionis* are returnable in the Chancerie. The other properly in the Exchequer. But may also be returned into the Chancerie.

Statutes.

36. E. 3. cap. 13. Stat. 1. No Escheator shall take enquests of office but indented betweene the Iurors and him, else they are void.

33. H. 8. cap. 22. Set *virtute officij* onely to finde an office of lands holden of the King of v. l. value or aboue, paine v. l.

3. H.

8. **D. 6. cap. 16.** Take enquests but of people impanelled by the Sherife, and those enquests must be returned within a moneth after the taking. Paine xx. l. So of Commissioners.

23. **D. 6. cap. 17.** Take enquest *virtute brevis*, but within a moneth after deliuerie of the writ, his fees are set downe.

1. **D. 8. cap. 8.** Made perpetuall. 3. **D. 8. cap. 2.** Sit vnlesse he haue lands, &c. to the cleare yearly value of xl. Marks. Paine xx. l.

Delay to take the verdict when the Iurie offer it, paine C. l. So of Commissioners.

Be Escheter in three yeares againe after that yeare ended.

34. **E. 3. cap. 13. Stat. 1.** A Trauerse given to the partie whose lands are seised by office for alienation without licence, or nonage of the heire in Ward, it shall be sent to the Kings Bench to be tried.

36. **E. 3. cap. 13. Stat. 1.** Vpon a traaverse or *Monstrans de droit*, the Chancellor may let him (thattendreth it) the Lands holden to farme finding suretie to do no wast.

8. **D. 6. cap. 16.** They shall not bee let to farme till the enquests returned, nor in a moneth after, within which time the partie grieved may haue the benefit of the former Statute.

All letters pattents within the moneth shall be void.

18. *H. 6. cap. 6.* All letters pattents made of lands or Tenements before office found or returned shall be void.

1. *H. 8. cap. 16.* The partie shall haue 3. moneths libertie after the office returned to tender his trauerse.

2. *E. 6. cap. 8.* Where an office is found for the King, he that hath interest for years or by Copie in the bond, or any rent Common, office, fee, or any profits of whatsoever estate out of the land shall haue them, though they bee not found in the office in such sort as they shold if no office had bin at all. When land is found holden of the K. immediatly, and that it should descend or come to an heire within age, which is or ought to be in the Kings ward, that heire within age may haue a Trauerse.

The partie griued may haue a trauerse immediatly or after at his pleasure, when one is found heire where another indeed is heire, or when one is found heire in one Countie, and another found heire to the same person in another Countie, or when one vnruly is found lunatick, ideot, or dead

The party griued may haue trauerse or *Monstrans de droit* (and shall not be driuen to petition) when it is vnruly found that one attainted of treason, felonie, or *præmunire* is seised of lands, whereunto another hath iust title of an estate of freehold. And
although

although the King bee entituled in such lands by double matter of record.

Vpon euery such trauerse a *scire facias* shall go out as in trauerses or petitions before, and the defendand therein haue the same aduantage that they had in a *scire facias* in a petition before.

In euery trauerse pursued by vertue of this act, where by the Common Law the partie were driuen to petition, two writs of search shall be granted. After Iudgement vpon a trauerse sued by vertue of this act, if it appeare by matter of record that the king hath a former title, the same shall be saued vnto him.

3rd tie. super chart. cap. 19. When the Escheator or Sherife seise land into the Kings hand without cause: vpon ousting of the Kings hands the partie shall haue the mesn issues restored to him.

20. Stat. De Escheatoribus If the Escheator by Writ out of the Chancerie seise land into the kings hand, and after vpon inquisition no title is for the King to haue the custodie. An ouster lemain shall be awarded for the partie out of the Chancerie.

Provided, that if any thing afterwards may be found in the Chancery, Exchequer, or Kings Bench for the King, a *Scire facias* shall go out against the party. And if the King haue right it shall be answered of all the issues from the time of the Eschetors first seising of the land.

14 E. 4. 5.

6 H. 7. 15.

(a) *Scams. prer.* 52.(b) *F. N. B.* 235. c.(c) *F. N. B.* 232.

14 E. 4. c.

F. N. B. 233. c.

23. *H. 6. cap. 17.* In a *Scire facias* vpon a Trauerse against any pattentee no protection allowable Upon an office found *virtute officij*, whereby the King is intituled to ones wardship, the heire shal neuer haue liuery, that is to say, the land deliuered out of the Kings hands. But vpon a perfect office *virtute breuis*, or *commissionis*, if it bee a speciall writ or commission, not a generall one to enquire of all wards he may. Therefore here the heire is allowed these commissions following, or writs in the nature of such commissions: viz. First, for the finding of an office for the King, then for the hauing of the land out of the Kings hand: Those for the finding of an office are, 1. *Diem clausit extremum*, *Mandamus*, & *Dennerunt*, to enquire what lands holden of the King, and what of other, the ancestor was seised of the day of his death, the value, the day of his death, who is the next heire, and of what age.

The *Diem clausit extremum* is to be fact within the yeare after his death.

Statutes.

14 E. 3. cap. 12. Lands by ward in the Kings hand shall be let to the next friends of the infant, to whom the enheritance cannot descend, if they offer speedily after *Diem clausit extremum* in the Chancerie to render till the Infants age, as other will without fraud.

The *Mandamus* after the yeare. And here it must further be enquired who took the profits. The *Deuenerunt* is when the suncester dyed in ward to the King. 2. a *Que plura, melius inquirendum, & Datum est nobis intelligi*, vpon def. & in offices found by vertue of such writs or commissions, but these shall neuer goe out vpon an office found *virtute officij*. *Que plura* vpon leaping out of any land in those offices.

Stamps 52.
F.N.B. 253 a.
F.N.B. 253 b.
Stamps ibide
Fitz ibid.
4. 2. 4 24.

Melius inquirendum vpon any other defect in the office, as if the office were insufficient (a) or vncertaine, or the (b) land of greater value, then is found in the office: or held by other seruices, or the Tenant seised of other estate.

F.N.B. 255.

(a) *E. 4. 24.*
(b) *F.N.B.* 255.

Datum est nobis intelligi, vpon an office finding lands to be holden of any other person, when there is a record to proue that is holden of the King, but this writ shall not be vpon a bare surmise.

2 *H. 2.*

Those for hauing the land out of the Kings hand are an *Etate probanda*, and a writ of *Lynerte*. *Etate probanda* is to enquire whether he be of full age, or not, before which time he is not to haue luerie. A writ of *Lynerte* is after a perfect office, (for no luerie shall be vpon an insufficient office) finding a tenure in chiefe whether by knights seruice or soccage: and whether the heire then be within age, or of full age. But he that holdeth of the King by knight seruice, but not in *Capite*, shall not sue luerie. But because none can enter vpon the King,

F.N.B. 257.

Stamps pro. 52.

F.N.B.

32 *H. 3. Br. luerie*
et ouster le main 62

(a) 44.E.3.27

(b) 2 H.7.12.

(c) F.N.B.156.

King, the heire (if hee were within age) when he cometh to his full age shall haue an ouster lemain, to haue all the lands deliuered to him at once by the King, which is called a liuerie, for if this be sued and no mention made of an auowson, all shall be refused, and the King answered of all the mesne issues. And a liuerie must be entire, and not by parcels. The manner thereof is this, when the heire in the Kings Ward is of full age, he shall haue a writ out of the Chancerie to the keeper of the priuie seale, testifying that he is of full age, and hereupon he shall haue a priuie seale to the Chamberleine of the King to receiue his homage. And when he hath receiued his homage hee shall haue a writ from the Chamberleine to the Chancellor testifying that he hath receiued his homage, and then upon he shall haue a writ of liuery.

Statutes.

28.E.3.cap.4. The rents giuen to them that sue liuerie when the rent day cometh, how soone soeuer it come after the liuerie.

32.H.8.cap.46. The Court of wards erected to be a court of record, officers appointed: a Master of wards that shall keepe the Seale, an Atturney, a Receiuor, two Auditors, two Clerks, a messenger and an usher.

All wards with their lands, &c. shall be in the ording of the Court.

They may sell and grant the K. wards or their

their lands during their minoritie, &c.

The same to passe by the Kings Bill assigned, which shall be a sufficient warrant to the Lord Chancellor for the great seale.

They may (without the Kings bill assigned) make good sales of vnderwoods, and appoint timber for necessarie reparations of the ward lands, and make leases during their minoritie, &c.

Widowes and the fines for their marriage are in the suruey of this Court.

So are Ideots and their lands, and the Court may let and set their lands.

The grantee of the custodie of Wardship of any of the Kings wards shall sue forth his patent within foure moneths next after the assignement of his bill, else the bill and effect thereof to be void.

Processe shall be made out of this Court against wards intruding vpon their lands before liuerie, or ouster lemaine vnder the great seale.

With many other matters concerning the authoritie of this Court, and the offices thereof.

33. ~~By~~ 8. ca 22. The office of the M. of the liuerie vnited to the Court of wards.

A surueyor of the liueries added and appointed to be the second officer.

A Clarke of the liueries also added.

All liueries suing shall be in the ordning of this Court.

None that hath land ouer the clear yearly value of v.l. (otherwise it is where the lād

is

is vnder that value) shall haue lierie before inquisition or office, by the Kings Writ or Commission, which shall not passe out of the Chancerie or other Court without a warrant directed to them out of the Court of Wards vnder their hand.

They shall set rates for lieries, and appoint dayes of payment, &c. and their Bill for lierie shall bee a sufficient warrant to the Lord Chancellor.

A generall lierie may be sued where the yearly value of the land exceeds not xx. l. but such generall lierie shall not be without warrant from this Court. The patent for lierie may be sued forth within three moneths next after the assignement of the Bill by the King or his Court.

1 H. 7. 28.

Two being found heires by one and the same title, whether twinlings that are males, found heire by one selfe same office or diuerse men by seuerall offices found heires to the same auncestour, and by the same title (for if one office find that the King gaue land to A. and the heires of his body, and that B. is his Cousin and heire, and another office findeth that the gift was in generall taile, and that foure daughters are his heires. There must be a Trauerse and no enterpleading, for they claimed not by one ancestor and title) **the King shall not make lierie till by enterpleader the truth be discussed at his full age that was found heire first**: for if A. of v. yeares is found heire of the kings Tenant, and after by another office

1 E. 4. 4.

office B. is found his heire, and of full age, B. hath no remedy till A. come of age, and then they must enterplead. And in every enterpleading, an office must bee found for both. And if one be found heire of full age, and after another within age, the enterpleading shall not stay till the full age of the second, because the other was found heire first. Among coparceners the King vpon luerie shall make partitton. And that is for the Kings benefit, because vpon that partition every one shall haue some part of the lands in chiefe. For if any should haue for their portion onely the lands holden of other men, then the King should lose his prerogative in those lands for ever, because they that haue them when they shall dye hold no lands of the King in *Capite*. And therefore in the writs of luerie there is a prouiso, that every one shall haue in her purpart, parcell of the lands holden in chiefe.

Stamf pr. 38.

CHAP. 25.

Of Presentments, or enditements.

A Presentment is an enquire finding some offence against the King, which is also called an Enditement. Therefore it is as it were the Kings action, whereupon the partie shall bee arraigned, or put to answer by the King: and tried

tried by another Iurie, which (in case of felonie or treason) we call the Iurie of life and death.

Everie strong suspicion of such offence, though it be in case of felonie, appearing of record hath the force of an endowment: as in an action of trespassse of goods carried away, if the defendant plead not guiltie, and bee found guiltie as a felon: in an appeale of murder, &c. if the Plaintiffe after declaration be non suit. But so is not the Sherifes returne, as where he returneth vpon one an escape of felonie, &c.

Without which the King can have no satte vpon a wrong done, principally to another: but done to himselfe he may.

For (a) preventing of certaine of those offences, that is to say, trespassses to the bodie and felonies, and committing them they offend to prison till they may bee ended, and so due ly punished, as (b) to arrest him that maketh an affray and send him to the next gaole, or vpon reasonable cause (as if it be night time, or there be that would rescue him, &c.) keeping him in the stocks till he can safely bring him to the gaole: or to (c) arrest him till he find suretie by obligation: every hundred hath his Constable. And every severall tithing within the hundred hath his Borsholder. The conservator of peace in an hundred is called a Constable, or high Constable: In a Tything, a pety Constable, Borsholder, Headborough, Thirdborough, Boroughhead, Tything-

man,

31 E.1 Endite. 31.

9 E.4.10:

1 E.3.28.

7 E.3.324.

(a) 12 H.7.18.
Constables and Borsholders are Conservators of the peace at the Comon law.

(b) 22 E.4.35.

(c) 9 E.4.26.

man, or chiefe pledge.

Statutes.

1. *E. 3. cap. 16. Stat. 1.* For the better keeping and maintaining of the peace, the King will that in euery Countie good men lawfull, which be not maintainers of ill, or barretors in the Countie, shall be assigned to keepe the peace.

18 *E. 3. cap. 2. Stat. 2.* Two or three of the best in reputation in the Counties shall bee assigned keepers of the peace by the Kings commission, and at what time need shall be, the same with other wise and learned in the Law shall bee assigned by the Kings commission, to heare and determine felonies and trespasses done in the same Counties.

34. *E. 3. cap. 1.* In euerie Countie of England shall be assigned for the safe keeping of the peace a Lord, and with him three or foure of the most worthy men in the countie, with some learned in the Law, and they shall haue power to distreine euill doers, riotors and barretors, and to pursue, arrest, take, and chastice them according to their trespassse and offence, and to do them to bee imprisoned, and duely punished according to the Law and customes of the Realme, and according to that to them shall seeme best by their discretions and good aduise-
Z
ments,

ments, and also to enforme themselves, and to enquire of all those that haue beene pillers and robbers in the parties beyond sea, and be now come againe, and go wandring and will not labour as they were wont in times past. And to take and arrest all those that they may find by enditement, or by suspicion, and to put them in prison, and to take of all them that bee not of good fame (whersoever they shall be found) sufficient suretie and mainprise for their good abearing towards the King, and towards his people, and to punish the other duely, to the intent that the people be not by such riotors troubled and endamaged, nor the peace blemished, nor Marchants nor other passing by the high wayes of the Realme, disturbed, nor put in feare by the perill which might happen to them by such euill doers. And also to heare and determine at the Kings suits all manner of felonies and trespasses done in the same Countie, according to the lawes and customes aforesaid.

13 Ric. 2. cap. 7. They must be sworne to keepe and put in execution all the Statutes and ordinance touching their offices.

2. H. 5. cap. 4. Stat. 1. The Iustices of peace must make their Sessions foure times by the yeare, that is to say, in the first weeke after the feast of Saint *Michael*, in the first weeke after the Epiphanie, In the first weeke after the claufe of Easter, and in the first

first weeke after the translation of S. *Thomas* the Martyr, (which is the 7. *July*) and more often if need be. And that the same Iustices hold their Sessions throughout the whole Realme of England in the same weeks, euery year from henceforth.

2. *8. ca. 5.* Iustices of peace from henceforth to be made in the Counties of England, shall be made of the most sufficient persons dwelling in the same Counties, by the aduise of the Chancellor, and of the Kings Councell, without taking other persons dwelling in forreine Countries, to occupie such office, except the Lords and the Iustices now named, and to be named by the King and his Councell. And except also the Kings high Stewards of the lands and seigniories of the Duchie of Lancaster, in the North and South parts, for the time being.

18. *6. cap. 11* None shall bee assigned Iustice of peace if he haue not lands to the value of xx. l. by yeare. This extendeth not to Townes corporate, Buroughes, &c. nor to persons learned in the Law.

1. *1. cap. 8.* No Sherife shall exercise the office of a Iustice of peace by force of commission, or otherwise in the same county during the time onely that he exerciseth the office of the Sherifewicke.

Any (a) man suspecting another of a felony (s) 9. R. 4. 16

(1) 9 E. 4. *ibid.*

(2) 10 E. 4. 6.

(4) 11 E. 4. 4.

(a) 9 E. 4. *ibid.*(b) 11 E. 4. *ibid.*

27 H. 8. 3.

lonie committed or but (b) intended, as where one lyeth in waite to rob the people that passe by, and draweth his sword vpon one willing him to deliuer his purse, &c. may arrest him (c) so as thereupon he commit him to the gaole, as (d) common voice and fame that he did the fact, or being present where a murder was done, and found with a sword drawne in his hand: or when a robberie was done, and found with some part of the goods; are iust causes of suspition. So if I would arrest one that hath robbed me, and I. S. say I shall not, this is good cause to suspect I. S. as accessarie: and what is sufficient cause of suspition, and what not shall be tried by the Iustices. But (a) neither can any man arrest one for a Trespasse, vnlesse it be the Constable, nor for a felony, except (b) himselfe suspect the partie (though hee doth it by the commandement of one that doth suspect him) and that the same felony bee indeed committed.

As if it bee for robberie, the selfe same thing must be stolne: for to say, that diuerse beecues were stolne, and because he suspected I. S. to haue stolne sixe beecues, he did arrest him, is not good, without alledging expressly, that those six beecues were stolne.

With enditements of Trespasse, information vpon penall Statutes (such as consist a pecuniarie mulct or other penaltie vpon offenders) haue a neare affinity. Concerning which informations, these

Statutes following were made.

Statutes.

4 H. 7. cap. 20. Where a penall Statute giveth whole or part to whosoever will sue a couenous release or recouerie (except it be by action) tryed vpon the point of the writte shall not preiudice him that will sue *bona fide*.

31. Eliz. cap. 5. All informations and en-
ditements where the forfeiture is limited to the Queene onely, must be brought within two yeares after the offence committed, when it is limited to the Queene, and any other that shall sue within one yeare, or (in default thereof) for the Queene within two yeares, except Statutes of Tillage. All brought after the time shall be void: where a shorter time is limited in any penall Statute the suit must be brought within that time.

27. Eliz. cap. 11. Information for the Queene vpon Statutes of Tillage, shall bee brought within v. yeares after the action accrued vnto her.

31. Eliz. cap. 5. Euerie information except champerty buying of extortions and offences against.

1. Eliz. cap. 1. Against forrestallers, &c. must be brought into the county where the
Z 3 offence

offence was indeed done But officers of record vsing to pursue informations by vertue of their office may do as before,

31. *Eliz. cap. 5.* All suits for vsing vnlawfull, or not vsing lawfull game, not hauing bowes or arrowes, vsing any art or mystery wherein hee hath beene brought vp, shall be sued and prosecuted in the general quarter Sessions of peace, or Assises of the same Countie, or in the Leet within which the offence is committed, and not out of the same Countie.

29. *Eliz. cap. 5.* The defendant in an information in the Kings Bench, Common place, or Exchequer, where he is baileable, or by leaue of the Court may appeare by Atturney, may the first day appeare by Atturney of that Court without putting in baile.

31. *Eliz. cap. 10.* This former Statute (29. *Eliz. cap. 5.*) shall extend onely to naturall subiects and free denizens.

18. *Eliz. cap. 5. made perpetuall.*

27. *Eliz. cap. 10.* An Informer shall not compound or agree with the partie before his answer nor after his answer, but by the order and consent of the Courts: if he delay his suit, or discontinue it, or be *non suit*, or if the matter passe against him by verdict or Iudgement, then he shall render to the partie

tie his costs and damages to bee assessed by the Court.

In which act also many other disorders in common Informers are redressed.

Indictments of the death of a man are to be taken before the Coroners. So is it not of any other felonie, for the Statute 4. C. 1. called *officium Coronatoris* setteth downe the office of a Coroner to be so by the common Law, and the whole order how he is to proceed in the inquirie. 35. H. 6. 27.

Statutes.

Artic super chart. cap. 3. The Coroner of the Shire shall ioyn with the Kings Coroner in inquiring of the death of a man within the Kings house.

33. H. 8. cap. 12. The Coroner of the kings house shall enquire alone without the Coroner of the Shire, by a Iurie of the yeomen officers of the Kings officers.

CHAP. 26.

Of Originall Processe.

Hitherto of the first matter of the suit, it followeth to speake of originall Processe.

Originall processe is that processe which is till the defendant do appeare.

Originall processe is single or milt.
Single, which is by the possession onely,
(land or goods) or onely by the person.

That by the land is of two sorts. first
sommmons and grand cape in a *precipe quod*
reddat.

The Sommmons is a warning of the te-
nant in his land, but not by his goods, nor
by a rent seruice, rent charge, rent secke, or
a Common which hee hath, for there the
land is anothers by certaine sommmons,
two at the least. The Sommmons vpon an
action brought against one as heire, must
be in land that did descend, otherwise it is
in any land.

If it bee to reconer the freehold of land
it selfe, it must be in the same land, else ma-
king default, hee may at the grand cape
wage his law of non sommmons. But if he ap-
peare, it makes no matter in what land hee
be sommmoned. A grand cape is a processe
to take the land into the Kings hands by
the view of lawfull men, called thereupon
Veyors, as the other are Parnors, with a
sommmons of the Tenant to answer (a) as
well to his default, as to the demandants
action, and therefore it is called a grand
Cape. Therefore here the Tenant is suffered
to saue his default as to say, that he was not
sommmoned according to the Law of the
land, and thereof is ready to do his law, or
that he was in prison, or disturbed by wa-
ter, &c.

And the King shall haue the land to his
owne

13 E. 2 Ind. 170.

17 H. 6. 26.

Old N. B. 177.
50 E. 3. 16.

(a) 38 H. 6. 33.

Old N. B. *ibid*.

Stamf. Tre. 24.

owne vse, the Sherife being accomptable of the issues therof from the default, til iudgement for the demandant.

Statutes.

31. Eliz. cap. 3. Vpon a Somon in a reall action fourteene dayes before the retorne, a Proclamation of the Somons shall be on a Sunday immediatly after diuine seruice, at the doore of the Parish Church where the land lyeth, and returned with the names of the Sommoners. And till that done, no *Grande cape* shall goe out, but an *alias & pluries* as the case requireth.

If the Tenant bee returned sommoned, where in deed hee was not, the writt shall abate. 22 H. 6. 41.

Secondly, it is summons & resommons, or another like summons in a mortdaunce, *for, iuris utrum*, and an assise of darrein presentment.

By the goods, as in assises of nonrel disseisin and nuisance, where the originall processe is a *Tone per vadios & saluos plegios*. A *Tone per vadios & saluos plegios* is a processe to attach the defendant by certaine of his (a) proper goods not borrowed, or impledge vnto him, beeing meere personall chattels, neither a (b) chattell reall, as a ward, &c. nor (c) parcell of his freehold as a clod of earth, &c. which hee shall (d) forfeit if he appeare not. (e) And the Sherife may take those goods with him, or leaue them with the partie at his pleasure. But whether

(a) 35 H. 6. 29.

Attachment 20.

(b) 7 H. 6. 10.

(c) 27 H. 6. 2.

(d) 9. H. 7. 9.

(e) *ibid.*

whethersoever hee doe, the propertie is not out of the partie till he make default.

The originall processe by the person is a *Capias* (which is processe to imprison him) then an *exigent* or solemnne (a) demand at five severall Countie Courts immediately following one another. Therefore (b) no *Allocato comitatu* lyeth if a Countie be holden after an *exigent* returned, and for not appearing, iudgement, to be out of the protection of the King and his Lawes, which wee call outlawry. The (c) iudgement wherof is to bee given by the Coroner in the fifth Countie. For (d) at the Common Law there is no outlawrie, but where the writ is *vi & armis*, as in trespassse, conspiracie, felony, &c. And the reason why it lyeth there, is, because they are acts founded vpon the sole tort of the defendant. And this is in matter felonie and treason.

Statutes.

1. H. 5. cap. 5. In every originall writ of actions personals, appeales, & enditements, in which the *Exigent* shall bee awarded: to the names of the defendants in such writs, originall appeales and enditements, additions shall be made of their estate and degree or mysterie, and the Townes, Hamlets and places, and the Counties wherof they were or be in which they were or be conuersant. Otherwise all outlawries thereupon pronounced shall bee none. And before these

out-

(a) Br. 707

Stamf. 15.

(b) 32 E. 3. *Exigent* 14.

(d) 35. H. 6. 6.

Br. *Exigent* 24.

11. H. 7. 26.

outlawries pronounced, the said Writs and Enditements shall be abated by the exception of the partie omitting the said additions.

6. D. 6. ca. 1. All *Exigends* and outlawries upon enditements in the K. Bench of felony and treason shall be void, if before the *exigend* awarded, a *Capias* be not directed to the Sherife of the Countie, whereof they be named in the enditement, hauing six weeks space (or larger, by the discretion of the Iustices) before the returne.

8. D. 6. cap. 10. In euery enditement or appeale of treason, felonie, or trespassse after the first *Capias* returned, soorthwith (before an *Exigend*) another *Capias* shal be awarded to the Sherife of the Countie where the enditement is supposed to abide returnable, before the same Iustices, &c. containing the space of three monethes (where the Counties be holden from moneth to moneth) of foure moneths: (where they be holden from sixe weekes to sixe weekes) by which *Capias* the Sherife shall be commanded to take his bodie if it be found in his Bailiwick, if it be not found, then to make proclamation (for his apparance) in two Counties before the returne of the writ. Any *exigend* or outlawrie otherwise pronounced shall be holden for none.

10. D. 6. cap. 6. The like is to be obserued when

when any such enditement or appeale taken before Iustices of peace, or other having power, shall bee remooued before the King in his Bench, or elsewhere by *Curia* or otherwise.

6. H. 3 cap. 4. Vpon euery *exigent* a writ to make three proclamations (returnable day of the returne of the *exigent*, and the proclamations to bee made, two in the full Countie Court, the third at the generall Sessions) shall go out to the Sherife of euerie other Countie (*viz.* than that where the action is brought) where the defendant is named to be, or late to haue beene; if the Kings writ runne there: otherwise to the Countie next adioyning to that where he is so named. Being named late of London or Middlesex, the writ of proclamation shall go out to euerie other Countie where he is abiding, time of the *exigent* awarded. Euery outlawrie to the contrarie shall be auoided by plea.

27. E. 3 cap. 2. A writ of *Idemtpitate nomen* giuen to those whose lands, goods, or chattels be seised by any officer, surmising them to be outlawed (where they be not) because they beare such names as those that be outlawed, for default of good declaration of the surname.

9. H. 6. cap. 4. Such an *Idemtpitate nomen* giuen to their Executors.

If the *Exigent* be returned not fully served without any folly in the Plaintiff, as (a) where the defendant after demand at two Counties rendreth himselfe in Court, and vpon mainprise found hath a *Superseas*, and yet appeareth not at the day. But otherwise it is vpon a (b) *Superseas* by another person bearing the same name, or in case where no (c) more Counties but foure can be holden betweene the deliuerie of the writ to the Sherife and the returne, for it is the Plaintifes owne follie in the first case to put no difference betweene their names, and in the second to take so short a time. Though it be in the (d) hustings of London which are holden vncertainly: the plaintiffe bringing a new *exigent* which we call an *Exigent de nouo* (e) before any other Countie holden, but else not, shall haue the benefit of the former Counties. And therefore it is called an *exigent allocato Comitatu*, or *allocato hustingo*, if it be in London, where their hustings are as the Countie Courts.

(a) 22 E. 3. 11.

(b) 38 E. 3. 1.

(c) 14 E. 3. En. 17

(d) 17 E. 3. 43.

(e) 22 E. 3. 11.

Outlawry disableth him from suing any action.

Li. 43.

Statutes.

5. E. 3. cap. 12. In case where the Plaintiff hath recovered damages, & he against whom the damages be recovered, is outlawed at the K. suit, no charter of pardon shall be granted, except the plaintiffe be satisfied for his damages. When one is outlawed by pro-
cess

appearance no such charter shall be granted, except he yeeld himselfe before the Justices from whom the *exigent* issued, who shall cause the partie to bee warned to appeare before them at a day. Whereupon the Plaintife appeare, they shall plead vpon the first originall, as if no outlawrie had beene. If the Plaintife appeare not (and the warning be duely witnessed) he that is outlawed shall bee deliucted by vertue of his Charter.

31. *Eliz. cap. 3.* Vpon every extent in a personall action a writ of proclamation shall go out of the same Court tot he Sheriffe of the Countie, where the defendant at the time of the *Exigent* shall bee dwelling. Whereupon three proclamations shall be made; one in open Countie Court, another at the quarter Sessiōs, the third one month at the least before the *Quint' exalt* at the doore of the Parish Church where the defendant shall be dwelling at the time of the *exigent*, vpon a Sonday immediatly after diuine seruice. All outlawries otherwise shall be void.

But before reuerfing of any such outlawrie in this respect, the defendant shall put in baile, not onely to answer the plaintife in a new action, but to satisfie the condemnation, if the Plaintife begin his suite within two Termes.

Prerog.

Prerogative.

By outlawrie all his chattels, whether heall as a (a) terme for yeares (and there-
fore there the King may seise the land it
selfe, and plow and sow, and occupie it as
the termor might) wardship, &c. or per-
sonal, as ones (c) goods (the propertie wher-
of is presently in the king, and he may haue
a detinue against euery man that hath a
possession of them) profits (d) of land,
wherein he hath a freehold or inheritance,
viz. rents, corne, mannurance of his pasture
(yet in this case he cannot, &c. seise the land
it selfe, nor occupie, plow, or sow it, or grant
it away. And if the party so outlawed make
a feoffment, this feoffment is good, and
the King after that shall haue the profits
no more.) But not (a) a fornace table fixed
vpon the land with posts, boords, doores,
windowes, and such like annexed to a free-
hold are forfeit to the King, not only those
in possession, but **even such as hee hath a**
right vnto, as debts, (viz (b) due by speci-
alty, but not (c) by a simple contract, for
the reason *supra* fol.) matters in (d) account,
(e) goodstaken away, &c. But not dama-
ges which he is to recouer, as by reason of
(f) trespassse done to his land, (g) batterrie,
false imprisonment, or such like.

(a) 9. H. 6. 30.

(c) 30. H. 6. 10.

(d) 9. H. 6. 30.

(e) 30. H. 7. 13.

(b) 50. ass. pl. 1.

19. H. 6. 47.

(c) 16. E. 4. 4.

50 ass. pl. 1.

9. El. Dy. 262.

3. E. 3. Cor. 343.

contr. Staf. 188. b.

(d) 50 ass. pl. 5.

28. E. 3. 92.

(e) Stamp. 188. b.

(f) 28. E. 3. 92.

(g) Stamp. 188. b.

In case of mayme there must bee three
Capias, two in felonie, as stealth, robberie,
and burglarie, one duely in the death of a
man, bee it murder or manslaughter, and
high

high Treason.

Statutes.

25. E. 3. cap. 14. The second *Capias* in case of felonie must be returned three weeks after. In case of Felonie and high Treason, they that carrie the *Exigent*, though they render themselves, forfeit their chateles.

22. ass. pl. 81.

22. M. 6. 38.

34. H. 6. 49.

F. N. Br. 92. 2.

2. H. 4. 25.

21. H. 6. 56.

Writ, is that which is so by his goods, as for want of goods hee may resort to his person. As first in all *Præcipe quod faciat*, and other personall *præcipes*, and in personall *Sisfecerit se securum*, not being against the peace, and likewise in all *Iusticiæ* or vicontie writs, the *proccesse* is a *Hommons* by the defendants goods, an attachment of *Pone per vadios* and distresse infinite. Or if upon the *Hommons* a *Nihil* be returned, that is to say, that the partie hath nothing wherby to be summoned, then a continuall *Capias*.

Distresse infinite is a *proccesse* to distress him continually after, till he do appeare by certaine of his goods, and profit of his lands, or as we vse to say, issues: which he loseth if he appeare not.

Statutes.

Westm. 1. cap. 37. No distresse shall be burby Baylifes sworne and knowne.

Westm.

Testm. 2. cap. 39. The plaintife may a-
uerre that the Sherife might haue returned
greater issues, and thereupon shall haue a
Iudiciall writ to the Iustice of assise to en-
quire of what & how great issues he might
haue answered from the day of the purchase
of the writ to the day of the returne, and the
Sherife shall be charged of the surplusage
not returned.

1. C. 5 cap. 5. The like auerment of two
smal issues returned giuen against the bai-
lives of franchises as well as the Sherife.

Upon this distresse must be returned in
issues the value of all his lands from the
Teste of the writt untill the day of the re-
turne. As if his land be worth xij. C. by the
yeare, and a moneths space betweene the
Teste and the returne a C. l. issues must be
returned vpon him.

And with these issues whether in this
case or in any other case of a distresse infi-
nite, as after a *venire facias* to returne Iu-
rors, &c. the land is chargeable into whose
hand soeuer it come after. As if issues be re-
turned vpon Tenant in taile, tenant for life,
or a man seised in the right of his wife, the
land shall be charged after their death: or
if an Abbot lose his issues, and after bee
translated and made a Bishop, the successor
during his life shall bee charged. And in
this respect because the land is charged, the
beasts of any stranger comming vpon the
same land may be distreined for the issues
lost.

24. El. Fairfaxes
case in the Common
place.

D. Stud. per Br.
issues 23.

22. H. 6. 4.

5. H. 7. 1. Br. of assise
41.

In such proces as these where an attach-
ment or distresse should go out, if the de-
fendant be a beneficed Clerk he must be sum-
med by his person, or land if he have any
lay fee etc. as if the Sherife returne *quod et*
Clericus beneficatus non habens laicum feud.
Processe shall goe out to the ordinarie, to
make him appeare by the iurisdiction of his be-
nefice, which is called a *venire facias cle-*
ricum.

Br exigent. 7 2.
It is error if he be
outlaw'd.
26 H. 8. 7.

¶ Capias lyeth not here against a Person
of the Realme. But against a Knight it ly-
eth, for a man may be a Knight that hath
no freehold: So cannot an Earle or Lord by
common entendement. But if he have no-
thing in the Countie where he is sued, the
partie shall have an *Elegit sure estatum* in
such a Countie where he hath assets.

F.N.B. 73. & 74.

In a replevin in the Countie Court, be-
it by writ or plaint, if the goods be conn-
ed away, so as at the Tenants suite they
cannot be restoyed, As if he that took them
driue them to a Fortlet or Castle, or out of
the Countie, &c. whereby the Sherife re-
turne vpon the *pluries* that they are eslo-
ned, processe of *Withernam* lyeth, which is
for the plaintife to haue of the others goods
till restitution of his owne.

Statutes.

W. 1. cap. 17. The Sherife or Bay-
life may take the power of his Countie or
Bailiwick, and beat downe a Castle or fort
where

where such beasts are enclosed, if hee that tooke them will not make deliuerance.

Secondly in Trespasses vpon the case against the peace, and in all other trespasses, whether it be a writ of deceit or Trespass *vi*, or though it bee a Writ from the King himselfe vpon a contempt or breach of the peace, as refusing to come at the King, being sent vnto him with money to aide him in his warre, and spoiling and wasting mens lands, goods, and chattels, and other vnlawfull acts doing, and so euerie contempt it is attachment: And if a *Capias* in these cases go out first, and the partie be taken thereby, he shall be dismissed, because it should bee by pledges, *distresse infinite*, and vpon a *Nihil* returned, a *Capias*, as before.

Here for contempt a *Capias* lyeth against Officers of the Realme, as for rescouing of one arrested by the course of the Law, &c. And that is in respect of their disturbance of the Law.

In actions of trespass with force, whether a common action or enditement of trespassse, appeale of battarie, or such like, after the attachment returned *nihil*, it is *thyer Capias*, viz. a *capias alias* and *pluries*, and then proceesse of outlarie.

Statutes.

Westm. 2. cap. 11. Proceesse of outlawrie giuen in an action of accompt.

A 2 2

25. 3.

25. *E. 3. cap. 17.* Such processe shall be made in a writ of debt and detinue of charters, and taking of beasts by writ of *capias*, and by processe of *Exigend* by the Sheriffe, as is now vsed in a writ of accompt.

7. *H. 3. cap. 1.* In writs to be purchased against those that forge or make vntre Charters or minuments, and them proclaime or cause to be read, like processe shall be made by *capias* and *exigend*, as in writ of Trespasse.

19. *H. 7. ca. 9.* Like processe giuen in actions vpon the case sued in the Kings Bench, and Common place, as in actions of Trespasse and debt.

23. *H. 8. cap. 14.* Like processe giuen in every writ of annitic as in an action of debt

CHAP. 27.

Of Counts.

Thus farre of the beginning of suite: The proceeding hath two parts, Count and pleading (which two are but one in pleading) of other meane acts.

11. *H. 7. 34.*

A condition (annexed to an estate of freehold) cannot be alledged in Count or pleading butesse it be by deed: Bec it in personell

personell or reall actions. But a condition knit to a lease for yeares, or grant of a wardship, or other chattell Reall may. Yet the Iurie vpon the generall issue (as *Waltort nul disseisin* in an assise) may find it if they will. And thereby the partie shall haue aduantage of it.

11. H. 7. *ibid.*
Lis. 85.

Count is a larger declaration for the time, place, quantitie of the land, and other such things of the substance of the originall writ. And therefore in a formedon of foure acres and Count but of one, all the Writ shall abate, for it is not pursued. In an appeale of murder, he cannot declare that the defendand traiterously killed him as he was going to succour the King, in his warres with xx. men in his company, &c. for the writ supposeth no treason.

8 E. 4. 2.
45. E. 3. 25.

Statutes.

36. E. 3. cap. 15. Declarations shall bee good enough if they haue matter of substance, though the termes be not apt.

In reall actions which are in the right (but not in meere possessorie ones) the demandant must alledge the taking of the profits, we call it esples, in the declaration. As in pleas of land, the taking of the profits of the land as errable, meadow, and pasture, &c. if of a pond, then by taking the fish there, as Breames, &c. In a writ of right of auowson, the esples shall be laid in his Clarks taking the great and small rythes.

8. E. 3. 78. 1.
26. H. 8. 1.

2. Mar. Dy. 114.
13. H. 8. 16.
19. H. 6. 32.1

Tr. Eplest. 11.
31. H. 6. 22.

9. H. 6. 53.
50. E. 3. 1.

In an assise of an office as of a filizarie, &c. seisin shall bee alledged by the taking of iiii. d. for making out a *capias*, or such like. In a *quod permittat*, by the taking of common by the mouth of his beasts. In a *natiue habendo*, esplees shall be alledged in the villeine, viz. in taxing him high and low at his pleasure, in making his profit of him, to driue his cattell, to carrie away his dounge, and to do all other kind of villeine seruice, &c. But in a writ of *Eschete*, in a writ of right sur disclaimer, and such like, which are founded vpon the seigniory, and not vpon any seisin of the land it selfe, no esplees shall be alledged. And these esplees where they are to be alledged, must be alledged in himselfe, if the action be brought of his owne seisin in his ancestor, if it be brought of his ancestors seisin, where it cannot be brought but of the seisin of some other, there it must be alledged in those other. As in a formedon en descender the esplees shall be alledged onely in the donee. In a formedon en remainder for an estate taile, onely in the particular Tenant to proue the estate taile executed. In a formedon en reuenter, they must be alledged both in the donor and the donee, for there a fee simple is demanded. In a lease for life the remainder in taile, and the lessee for life, and he in the remainder in taile dye, the issue in taile shall haue a formedon en descender, and make no mention of the Tenant for life. And therefore the esplees shall be onely alledged

ged in tenant in taile, otherwise it is in the like case of a reuerſion in taile granted.

In ſtead of Count, a plaint ſhall bee made in aſſiſes of nonell diſſeiſin, and in writs of doſwer & demand.

CHAP. 28.

Of pleading.

Pleading is the parties debating of the ſuite.

Every plea, as Barre, replication, reioynder, Surreioynder, &c. muſt be offered to be proued true. By ſaying in the plea, *Et hoc patro natus eſt verificare*, which we call an auerment. But no auerment need to be in auowrie, for it is in lieu of a Count and declaration. And the auowant is in a manner actor and plaintife, and to haue a returne,

7. El. Pl. 343.

An aduantage of a matter which cannot be pleaded, ſhall be ſaued by proteſting not acknowledging it to be true, although matter pleaded paſſe againſt him. As if an infant bring an action of waſte againſt his gardein, and appeare by Atturney (which none ſhould do but one of full age) if the gardein take his nonage by proteſtation becauſe he cannot plead it, it ſhall ſaue him from all miſchiefe. But in detinue brought by the Executor of A. the defendant cannot take by proteſtation, that A. made not the

48. E. 3. 10.

4. El. Pl. 276.

plaintife his executour, for that is the verie ground of the suit, and may be denied by answer, and issue ioyned vpon it. And a protestation is but a sauing to the partie that taketh it, from being concluded of some matter alledged against him, whereupon he cannot ioync issue.

Pleas are either of the defendant when he is first brought in to answer, or the mutual pleas of both. In a toynt action against two or moze: as in (a) an action of debt. But otherwise it is in a writ of (b) conspiracy against two, for they are seuerall wrongs, one of them appearing that not answer. But must haue *idem dies* till the other come in to answer, or (c) the suit be finished against him. As by death or outlary in a personall action, debt, accompt, or such like.

An action by or against an Infant as heire, as (d) a *formdon en descender* brought by him, or a writ of (e) error against him where his auncestor recouered; but (f) not where he commeth in of his owne wrong shall not proceed till his full age, vntlesse it be apparant that by proceeding hee cannot be prejudiced. As in (g) a *formedon en descender* by an Infant, if the tenaunt plead a warrantie with assents against him, the parroll shall demurre, for if he trauesse the assents hee should acknowledge the deed of warrantie. But (h) if the tenant pleade a recouerie in auoidance of the estate taile, the parroll shall not demurre: for there the Court shall plead for him. But (i) it shall

not

(a) 48.E.3.1.

(b) 1.H.7.25.

(c) 41.E.3.3.

(d) 48.E.3.33.

(e) 9 H 6. 46.

(f) age 16.

(g) 48.E.3.33.

(h) 48.E.3. *ibid.*

(i) 12.E.4.17.

Age 18.

not demurre in a writ of entrie *sur disseisin* by an infant, though the tenaunt pleade a matter *en fait*, as a feoffement with warrantie by the ancestor of the infant, for there the infant claimeth of his owne possession. And if an infant and his ancestor be Iointenants in fee, and the infant suruineth in a *precipe quod reddat* against the infant hee shall not haue his age.

48.E.3.35.

Statutes.

Westm. 2. cap. 40. The husbands heire called to warranty by the alience by a *Cui in vita* shall not haue his age.

Glocest. cap. 2. An infant holden out of his heritage after the death of his father, cousin, grandfather, great grandfather, in an action thereupon shall not haue his age.

Westm. 1. cap. 46. In a writ of entrie by the heire of the disseisee the suit shall not stay for his nonage, no more shall it for the nonage of the heire of the disseisor, if the disseisee bring his assise, and before the assise passe the disseisor dye. The like incorporations where the lands go by succession. But in a writ of dower an infant heire shall not haue his age, (a) nor the heire of the vouchee, in a *Quod ei de forceat* vpon a recouerie in a writ of dower, for it is in the nature of the first writ.

39.H.4.39.

(a) 44.E.3.42.

CHAP. 29.

Of Pleas to the Jurisdiction and Person.

The Defendants first pleas are dilatorie, or to the action.

Dilatorie, which are before any plea in barre.

12 H. 7. 3.

When an action is brought against many, they must toyne in the plea if they plead these dilatories, for in a *precipe quod reddat*, one cannot demand the view, and the other pray in aide, nor one pray in a ide of one man, and the other of another man.

Dilatorie pleas are exceptions, or foreign Advantages.

Braffm.

Exceptions are such dilatories grounded upon the matter it selfe of the suit. And are in disability or abatement. Those in disability, are to the Jurisdiction or Person. Both which must be before the count made.

To the Jurisdiction, when it is alledged that the Court ought not to hold plea of it.

3 H. 6. 40.
Lit. 44

To the Person, when it is alledged that the Plaintiffe ought not to be answered, as if he be outlawed, excommunicated, &c. In which latter case the suite shall bee put without day, onely till he be absolved.

CHAP.

CHAP. 30.

Of Pleas in Abatement.

Those in abatement are for any fault in the first matter of the suite, for which cause the defendant may have over of any thing tendred by the plaintife, and not being parcell of the record, as of the writ, condition, &c.

Pleas in abatement are to the Count first, and then to the writ, for after pleading to the (a) Count or to the (b) plaint in an assise, a man may pleade vnto the writ, but (c) not to the Count after plea to the writ, but (d) to the matter of the Count he may.

And among pleas to the writ, exceptions that arise vpon the view of the writ are to be pleaded before those that are for reue, or dehors the writ as non tenure, seuerall tenancie, &c.

Pleas to the Count are for insufficiencie, variance from the writ, &c.

Pleas to the writ are for default of forme, false Latine, &c.

By waiving of Law of non commons in a *præcipe quod reddat* the writ shall abate.

In assises of nouell disseisin and nuisance, in appeales of felonie and *iuris vtrius* the defendant may haue many pleas, two, three, or more in abatement. As that there is no such towne, Hamlet, or place knowne by

(a) 30.E.3.20.

(b) 4.E.3.166.

(c) 4.E.3.134.

115.

(d) 24.E.3.47.

35.

2.E.3.70.

22.H.6.41.

Stam. 32.e of an assise. F.N.B. So k of a iuris vtrius al. fa.

1.E.4.4.

by the name, &c. and if that be not found, then that no Tenant of the freehold is named in the Writ, &c. So in an appeale of felonie, whether the same matters be of severall natures (that is to say) one triable by record, the other by the Countrey, as that the appeale was purchased hanging another, and also that there is no such Towne, nor Hamlet, nor place knowne out of the Towne and Hamlet as C. whence the defendant is supposed: or all of one nature triable by the Countrey, as that his name is *William*, where hee is named in the appeale *Iohn*, and also that there is no such Towne, &c. or that the partie whom he is supposed by the appeale to kill, was dead such a day, which was two yeares before the appeale commenced. Or that the Plaintife is a Bastard: or beeing a woman which bringeth an appeale of the death of her husband, that they were neuer accoupled in lawfull matrimonie.

The writ abating for some cause that cannot be imputed to the Plaintifes folly: as for (a) false Latin, non (b) sommons of the Sherife, (c) Ioyntenancie, and such like: but not for non (d) tenure, or (e) naming one an Esquire when he is a Knight, himselfe bringing another with speed in the same Court against the same partie, we call it a writ purchased by Iourneys accompts, shall have all advantages of the former, for he shall recover (f) costs for the first suit: the (g) defendant being Executor shall

23.E.4.19.

(a) 38.E.3. per

46.E.3.14.

(b) 46.E.3.14.

(c) 32.H.6.24.

(d) 33.H.6.3.

(e) 33.H.6. ibid.

(f) 9.E.4.9.

(g) 2.H.4.21.

shall be charged with the assets which hee had day of the first writ. (a) Being tenant day of the first writ, hee shall not pleade non tenure, being (b) sole tenaunt then he shall not pleade Ioyntenancie: being (c) Ioynttenaunt, then he shall not pleade severall tenancie. But no writ by Iourneys accompts lyeth by or against any other then the selfe same parties, and in the same Court that the former was: for (d) if the Plaintife in a severall action dye, his executors cannot haue an action by Iourneys accompts. And (e) if two coperceners bring a formedon, and one dyeth, the other as heire to her father may haue a Writ of all by Iourneys accompts. But as heire to her sister of her part she cannot. So if (f) the Tenant in the *precipe* die vpon a writ of dower brought, or such like, no writ lieth by iourneys accompts. But (g) vpon the death of one of the Ioyntenants in a *precipe quod reddat*, where the other hath all by survivor it doth: lastly, if an assise of fresh force be abated in the franchise, a new assise by Iourneys accompts cannot be in the Guild hall before the Iustices of assise.

(a) 46.E.3.14.

(b) 41.E.3.4.

(c) 43.E.3.16.

(d) 4 E.6. Br. 1
Iourneys accom, 33.

(e) 7.H.6.16.83.

(f) 14.H.4. 20
7.H.6.34.

(g) 7.H.6.33.

C H A P. 31.

*Of Oyer of the writ or bond, &c.
view and prayer, voucher, garnish-
ment, Enterpleader to the writ
and Sanctuarie.*

Foreine advantages are delays
without exception to any thing. As
in all actions, oyer of the writ, &c. In
reall actions, view, aide, prayer, and
voucher.

View is in reall actions of the thing de-
manded, or of the land whence it cometh,
when it is so necessarie as without view
the defendant cannot well answer.

Statutes.

Westm. 1. cap. 48. From henceforth view
shall not be granted but in case where the
view is necessarie, as if one lose land by de-
fault, and he that loseth, moueth a writ to
demand the same land. And in case where
one by an exception dilatorie, abateth a
writ after the view, as by non tenure or mis-
naming of the Towne, or such like, if hee
purchase another writ in this case, and in
the case before mentioned, from henceforth
the view shall not be granted if he had view
in the first writs. In a writ of dower where
the demand is of the land that the husband
alienated

*Stat. West. 1. c. 48.
from henceforth
view shall not be
granted but where
it is necessarie, &c.
showeth that is did
he in those cases as
the common Law.
And this view must
be demanded before
any plea in bar, &c.
may be after plea-
ding to the writ: for
though one plead a
plea that goeth to
the action (as that
the plaintife is an
alien) yet if he con-
clude to the writ, he
may haue view after
3. H. 6. 35.*

alienated to the tenant or his Aunceftours where the tenant ought not to be ignorant what land the husband did alien vnto him, or his anceftours; though the husband died not seised, yet from henceforth view shall not be granted. In a Writ of Entrie also that is abated, because the demandant misnamed the Entrie; if he purchase another Writ of Entrie, if the tenant had view in the first writ, he shall not haue it in the second. In all writs also where lands be demanded by reason of a Lease made by the demandant or his ancestor, as that which he leased to him beeing within age, not whole of mind, being in prison, and such like, view shall not bee granted hereafter: but if the demise was made to his ancestor, the view shal not lie as it hath don before.

Stat. De visu terre & essayne de seruitio Domini Regis: View shall not be granted in a Writ of Ward, in a Writ of Customs & Seruices, in a Writ of Aduowson of a Church (but not in case where there be no more Churches than one in a towne, and all of one Saint) in a Writ of Dower, and in a Writ of *Nuper obijt.*

Ayd Prayer is for Tenant for life, to request him that hath the Inheritance, to helpe him plead. And therefore here the tenant himselfe remaineth alwaies party, & is neuer out of Court: and this Aid Prayer is for the feebleness of his estate.

31 E. 3. Joind in
aid 10.
33 H. 6. 29.

So must an Incumbent, the Patron, & Ordinarie. Else no recouerie against him bindeth the successor or them. And that is in respect of their interest to the Church, the Patron to present, and to haue an *Inducavit* of the tythes: the Ordinarie to admit & to present by Laps. But vpon Aid prayer it doth, though they make default, & confesse the Action.

Statutes.

Writtm. 2. Cap. 3. He that is in the reuersion shall be receiued in default of the Tenant for life. If iudgement be given by reddition, or default, hee in the reuersion shall haue a Writ of Entrie after the death of the Termor: so shall the heire where the Tenant was Tenant in Taile.

20. C. 1. De Defensionis iuris: he in the reuersion desiring to be receiued before iudgement, shall finde suretie (as the Court shal allow) to answer the value of the issues of the Tenants from the day of the receit, till iudgement, if it passe for the demandant.

13. R. 2. Cap 17. The like receit shal be for him in the reuersion vpon the faint pleading of such a Tenant, and hee shall plead in chiefe without delay. And the Iudges by discretion shall giue dayes of grace betweene the demandant and him that is receiued; without giuing the common

mon day in plea of land, vnlesse it be by the demandants assent. Suretie of the issue shal be found (as before 20. E. 1.) as wel where the receit is counterpleaded as where it is granted.

Glocest. cap. 11. Tenant for yeares shall be receiued before Iudgement rendred, to say that the action was by couin.

Westm. 2. cap. 3. Receit is giuen to the wife in her husband, if he lose her land by default, and the tenaunt that recovered against her husband must maintaine his ownright.

Voucher is the calling of one that should warrant in to answer the action. Therefore vpon the vouchees entring into warrantie the tenant is out of Court. And notwithstanding a recouerie in a *Warrantia charta*, yet if he bee afterwards impleaded in an action where voucher lyeth, he must vouch him against whom the recouerie was: else he shall haue no benefit of that recouerie.

31. E. 3. *Regul. m.*
ord. 10.
F.N.B. 134. b.

Statutes.

Westm. 1. cap. 39. In mortdauncestor *in- per abijt*, intrusion, or other such like writs in which land is demanded which should defend, couert, remaine, or eschete, after the death of any ancestor or otherwise, if the tenant vouch, it is a good counterplea to say that the tenant or his ancestor was the first

Bb

that

that entred after the death of him of whose seisin he demands, vnlesse the vouchee bee readie, who if he vouch ouer, the demaundant shall haue his counterplea.

Also in a writ of Entrie in the degrees none shall vouch out of the line. Also in writs of right or of possession (as before) that is a good counterplea, that the vouchee nor his ancestor had neuer seisin of the land or any thing in the seruices by the hand of the Tenant, or his ancestors from the time of the seisin whereof the defendant declares till the writ purchased, so that hee might a feoffement make vnlesse the vouchee be present, who if he vouch ouer, the demaundant shall haue his Counterplea. But warrantie of charters lyes in these cases.

20. *C. 1. Stat. de vocat. ad warrant.* This Counterplea of voucher that the vouchee nor his ancestors had neuer any thing, so as he could a feoffement make with warranty shall be receiued, although the vouchee be readie to enter into warrantie.

14 *C. 3. cap. 18.* If the tenaunt vouch a dead man, the demaundant may auerre he is dead, or there is none such.

Writ. 2. cap. 6. If the vouchee counterplead the warrantie, and it be found against him, he shall lose the land. *Where the vouchee losing the Tenant shall recover in damages*

the against him any hereditaments that he had at the time of the voucher. And therefore a voucher is in lieu of an action where the originall processe is *Somons ad warrantizandum* (or (a) if one bee vouched within age a *Somons ad habendum visum* first, and being awarded offull age, then a *Somons ad warrantizandum*, if he be awarded within age the parroll shall demurre) and a *Grande Cape ad valentiam*. If the *Sommons ad warrantizandum* or *habendum visum*, alias, and pluries, be not serued, then a *sequatur sub suo periculo* is to goe forth. And if the tenant cannot get that serued, he loseth his warrantie. Therefore it is *sub periculo* of the tenant. And if vpon vouching of an heire the *Sequatur sub suo periculo* be returned *nihil* in the land by descent, but that he was sommoned in land that he had purchased, the tenant loseth his warrantie, for the sommons must be in lands descended. But if the *Sequatur sub suo periculo*, or the *Cape ad valentiam* bee returned serued, there the Tenant shall recover in value.

But in exchanges the hereditaments are lyable from the betie time of the Exchange.

In partition among coparceners, from the death of their ancestor. So as the wiues dower whom he taketh before any voucher by reason of such an (a) exchange, or whom a (b) coparcener in gauell kind marrieth at any time, shall be defeated vpon a recovery in value or *pro rata*, for so is the reco-

(a) 45.E.3.23.

14.H.6.2. Br.

Seq sub, &c. 3.

(b) Old N.B. 11.

Old N.B. ibid.

13.E.3. Judgement

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3.H.7.13. Br. 30.
con. cu value 40.

(a) Park. 613.

(b) Park. ibid.

uerie in value called in the case of coparceners.

Prerogative.

15. H. 7. 10.

9 H. 6. 4.

The King shall not bee vouched, but prayed in aide of which in that case hath the force of a voucher. As if the King by his letters pattents giue lands to one by this word (*Dedi*) the patentee shall haue aide of him, because by the same word he might vouch a common person. And when one prayeth in aide of the King in lieu of a voucher, the speciall cause must be entered, else hee shall neuer haue in value by petition.

1. E. 3. 4.

So of Coparceners.

And if two parceners make partition, one alienateth part of her purpartie, the other is impleaded and prayeth in aide of her coparcener, and they lose. In this case she shall recouer according to the rate of the moitie which she lost, whether the other alienated before aid prayer, or after.

5. N. B. 173.

In an assise of nouell disseisin and nuisance, voucher lyeth not, vnlesse the voucher be present in Court, and will by and by enter into warrantie.

He that is impleaded in any action where in he may vouch and doth not, shall neuer haue the benefit of a *warrantia chartae*.

Advantages in certaine personell actions are Garnishment and Enterpleader. Garnishment is vpon a writ of detinue, when

When being alledged by the defendant to have been upon a bailment by the plaintiff, and another or for another upon condition. As that if I. S. doe such a thing the goods shall be delivered to him (for though the plaintiff sole delivered the goods, and I. S. were a stranger, yet I. S. is to have advantage of the condition, and may have a writ of detinue) if not, then redelivered to the plaintiff, that other shall be brought in to shew whether by reason of that bailment which the defendant so alledgeth both for the (a) place, (b) condition, (c) and matter of the bailment, viz. who bailed it, &c. from which the Garnishee cannot varie howsoever it agree or disagree with the plaintiffes declaration, himselfe or the plaintiff ought to have them, for garnishment is but to know whether the condition, &c. alledged by the defendant were performed or not. And if they were delivered upon other condition then the defendant alledgeth, the garnishee is at no mischief but the defendant: for the garnishee may recover them by a writ of detinue, and the defendant by his false plea maketh himselfe chargeable both to the plaintiff and to the garnishee. But if the defendant affirme not any certaine bailment for place, condition, matter, &c. as if the plaintiff declare of a bailment upon certaine conditions, &c. and shew which, and that he hath performed them, and the defendant pray garnishment generally: then the garnishee may

14 E. 4. 2.

(a) 21. H. 6 35.

(b) 40. E. 3. 11.

(c) 30. E. 4. 13.

(d) 40. E. 3. 11.

(e) 4. E. 3. *ibid.*

21. H. 6 35.

varie from the bailement alledged by the Plaintife, for the defendant hath not affirmed the same.

(a) 33. H. 6. 25.

8. H. 6. 30.

(b) 3. H. 6. 44.

(c) 19. H. 6. 68.

(d) 8. H. 6. 30.

(e) 33. H. 6. 25.

(f) 8. H. 6. *ibid.*

33. H. 6. *ibid.*

8. H. 6. *ibid.*

Enterpleder is when diuers bringing severall writs of (a) detinue, Ward (b) of Quare (c) impedit against the same person in the same County, and for the same thing, though (d) they varie in time and place of deliuerie (for the place is not materiall being all in one Countie) so as they varie not in the substance of their declaration, as for to declare of a chest sealed, without alledging any deed in certaine: and the other to alledge a deed in certaine. They (f) all shall enterplead together, as much to say, the rest shall answer him that brought the first writ, and therefore shall haue the same day giuen them, if the writs be returnable at severall dayes. And the reason of enterpleading in detinue is, because otherwise if one recouer against the defendant, yet the others action is not abated, but continueth still. Otherwise it is in a reall action as in a formedon *precipe quod reddat*.

Prerogative.

The King may appoint any place he thinketh good to be a safegard for all offenders flying thither, that they shall not be molested or compelled to answer, whether one fliethither for (a) treason, (b) murder, theft, or other crime, for which he should lose life or member. And therefore this taxing

(a) 1. H. 3. 25.

(b) Statut. 111.

The Abbes of bas-
tills had so.

king effect by the Kings grant onely (for touching the Kings prerogative so nigh it cannot (d) be by prescription) and being an immunitie to one that offendeth the King and his Crowne, is a (e) temporall matter pertaining to the temporall coercion & Iurisdiction, and need no consecration. But yet when it is consecrate by the Popes vnholly Ceremonies, it obtaineth the name of Sanctuary.

(d) 1.H.7.16.

(e) 1.H.7.25.

Statutes.

Taking of sanctuary away.

26. *H. 8. cap. 17.* In high Treason.

21. *H. 8. cap. 7.* In Petit Treason.

27. *H. 8. cap. 4.* and 28. *H. 8. cap. 14.* In treasons, felonies, robberies, and confederacies, in or vpon the Sea, or other haucn, riuer, creeke, or place where the Admirall hath or pretendeth iurisdiction.

32. *H. 8. cap. 4.* In wilfull murder, rape, robbrie, in or neere the high way, or in any house, putting any person within in feare of his life, felonies, burning of houses or barnes with corne, robberies of Churches, Chappels, or hallowed places, and all procurors, and abbettors, and all offences where sanctuarie lyeth not by the Law, or is taken away by any former Statute.

32. *H. 8. cap. 12.* In Treason, Misprision

of treason, Manslaughter within any of the places or houses of the King, or his heires, or where the King in person is abiding. So in stealing or in feloniously carrying away any plate, iewell or other goods of the king or his successors, about xij.d. value.

32. *H. 8. cap. 1. made perpetuall.* 32. *H. 8. cap. 3. 1. E. 6. cap. 12.* In murder or poysoning of malice prepenced, breaking of any house by day or night, any person being in it and put in feare thereby, robbing in or nigh the high way, felonious stealing of horses, geldings or Mares, or stealing goods out of any Church or Chappell. But in all other cases of felonie it shall be granted.

2. *E. 6. cap. 3.* In felonious stealing of ones Horse, Gelding, or Mare.

1. *Mar. cap. 6.* In counterfeiting coyne that is not the coyne of the Realme, or currant in the Realme, the Queenes signe, manuell priuie signet, or priuie scale: and all procuring and abetting.

1. and 2. *H. and Mar. cap. 4.* From these that call themselues Egyptians.

27. *H. 8. cap. 19.* All in sanctuarie for murder or felonie out of the house, weare a badge in length and breadth ten inches: they shall weare no weapon but their meate knives, and that at meale onely.
Both

Both these vpon paine of losse of the priuiledge.

They shall not be out of their lodging before Sunne rising, nor after Sunne set vpon paine of imprisonment two dayes in that sanctuarie for the first time he is so taken, the second time sixe dayes imprisonment, the third time losse of his priuiledge, vpon substantiall and indifferent proofes before the Lord Chancellor. And it is felonie for any sanctuarie person that shall of prepenched malice make rescues, or resist any officer in imprisoning the priuiledged persons as before. Contracts vnder xl. s. trespassse and couenant betweene the priuiledged persons, and other inhabitants in the sanctuarie, shall be determined before the Gouvernour.

32. **H. 8. cap. 12.** All sanctuaries aduulged other then Churches and Churchyards, and certaine places named in that Act, and in 33. **H. 8. cap. 15.** which are appointed places of Tuition, for terme of life to the offenders in capitall offences. The priuiledged persons shall euerie day bee called by name, and making default three seuerall dayes with lawfull cause, forfeit the priuiledge: committing any offence punishable by death is forfeiture also.

CHAP. 32.

Of Pleas in Barre.

Thus farre of Dilatorie pleas.
 Pleas to the action are those
 that go to the bodie of the matter.
 And are pleas in barre or confes-
 sions. Pleas in barre are those
 which are to barre the plaintiffe of his action,
 where the Defendant must make defence,
 as to say, *Defendit vim & iniuriam quando.*
 But this defence shall not bee in
 power assise of novell disseisin, *Per que servicia*,
 and attainr.

34. H. 6. 33.

2. H. 7. 130.

The Tenant may plead a warrantie in
 bar of him that should warrant if he bring
 the action. As if there bee grandfather, father
 and sonne, the grandfather is disseised,
 the father releaseth to the disseisor with
 warrantie, and dyeth after the grandfather
 dyeth. Now if the sonne bring an action to
 recouer the land, he shall be barred by the
 warrantie made by his father, and this is
 called a Rebutter.

Statutes.

Glocest. cap. 3. The heire shall not bee
 barred of his mothers inheritance by the
 warrantie of the father, being Tenaunt by
 curtesie, or alienating without fine in the
 mo-

mothers life time except he leaue affets.

And though the Tenant of the land bee a stranger to the warrantie, as a disseisor or one that commeth in by a recouerie, may plead that hee hath a third persons estate and (a) rebut, but not vouch by a warrantie made vnto the person. But in (b) writs of dower the ancestors warrantie is no barre.

(a) 42.E.19.

(b) 21.E.4.21.

(c) Lib. Chap. of Warranty.

A warrantie made by the disseisor at the time of the disseisin: we call it a warrantie commencing by disseisin. As the feoffement with warranty of a father, or other ancestor, lessee for yeares or at will, of the demise of his sonne, or of gardein in Knight seruice or soccage, or where one which hath not right entred into the land, and presently maketh a feoffement with warrantie, barreth not his heire, (d) for then his action and right should be lost for euer. But by such a warrantie the heire may be vouched, for that is in the nature of a couenant against him as heire to his ancestor. So that if hee haue other land descended to him from the same ancestor, it is reason that he warrant that which he may do, sauing to him his action that he may haue by reason of the disseisin.

(d) 50.E.3.19.

In an assise of nouell disseisin and trespasse the defendant pleading a title in barre must giue colour of title to the Plaintife, for if either it bee no title, as either in trespasse to plead (a) it is his freehold, or (b) the freehold of I. S. and that he entred by his com-

(a) 22.H.6.50.

(b) 2.E.4.8.

(c) 13.H. 7. 10.

(d) 21.S. 4. *Mid.*

(e) 32.H. 6. 1.

(f) 21.E. 4. 5.

commandement, or (c) when one prayeth in aide of I. S. or of the King, or *Rege in consilio*, though he entitle himselfe by a lease at will, &c. colour needs not. Otherwise it is (d) if hee entitle another to a lease for yeares, and iustifie by his commandement. So (e) if a matter that destroyeth the plaintifes title, as a release in an assise, in a Trespasse of goods a sale by a stranger in market ouert, and that the plaintife tooke them out of his possession, and he retooke them, there colour needs not.

No more it doth where he pleadeth to the writ and not in bar, though the plea indeed go in bar. As in trespassse of goods, that I. S. was possessed and made Alice S. and I. D. his executors and died. Alice S. tooke the Plaintife to husband and was couert day of the trespassse and after died. So should the writ be brought by I. D. who is yet in full life, not named in the writ, Iudgement of the writ, &c.

And in giuing colour these things must be obserued.

38.H. 6. 7.

1. It must bee to the plaintife, not to a stranger, nor to the defendant.

Not to a stranger, as in trespassse that A. was seised and him enfeofed, and I. S. claiming by colour of a deed of feoffement from A. where nothing in truth passed, &c. entred and enfeofed the plaintife. This is no good colour, for in a stranger matters *en fait* must alwaies be alledged, as to say, that I. S. enfeofed A. who enfeofed the Plaintife:

life; or that A. entred and disseised I. S. and enfeofed the plaintife, &c.

Neither must the plaintife giue colour to the defendant, as where the defendant pleadeth his freehold, now if the plaintife say that before the defendant any thing had, A. was seised and enfeofed the plaintife, & the D. claiming by color of a deed of feoffement frō A. where nothing passed, &c. entred, vpon whom the reentred is not good.

19. H. 6. 31.

2. It must be of such a possession wherby he may maintaine his action.

32. H. 6. 6.

As in an assise the defendant must giue the Pl. a colour of the Pl. owne possession, and not of the possession of his ancestor, as to say that the plaintife claiming by colour of a deed of feoffement made vnto himselfe where nothing passed, &c. is good. But not to say that the plaintife claiming by colour of a deed of feoffement made to his ancestor where nothing passed, &c. for of such a possession in his ancestor he cannot haue an assise.

3. The colour must bee a matter doubtfull in Law, or otherwise difficult to the lay people, else it is not sufferable, but he shall be forced to take the generall issue, as in an assise to say, *Nul tort, &c.* or in an action of Trespasse, not guiltie. As if I bring an assise against you, and you say that you let the same land to one for terme of life, and after granted the reuersion to me, and the Tenant for terme of life dyed, and that I claiming the reuersion by force of the said grant,

19. H. 6. 27.

grant, where the Tenant did neuer attorne
 entred, &c. This especiall matter is suffere-
 ble, because that is dangerous to plead *Nat-
 tort, &c.* For the lay people will thinke that
 the reuerſion paſſeth by force of the grant
 without attornment. The ſame Law it is
 where the Tenant ſaith, that he himſelfe
 let the land to the Plaintife, for terme of his
 life, and then the Plaintife did ſurrender.
 For the lay people know not that a ſurren-
 der may paſſe by word. The ſame Law it is
 where the Tenant ſaith, that the father of
 the Plaintife let vnto him for terme of ano-
 ther mans life, and after releaſed vnto him.
 And the Plaintife ſuppoſing that his father
 died ſeiſed of the reuerſion ouſted him af-
 ter the death of him, for whoſe life, &c. be-
 cauſe the lay people vnderſtand not how
 this releaſe doth inure, whether by way of
 enlargement, feoffement, confirmation, or
 extinguishment. The ſame Law it is if the
 Tenant ſay that the father of the Plaintife
 enfeoffed him, and afterwards ſuffered him
 to occupie at will, and hee ſuppoſing, &c.
 The ſame Law it is to ſay, that the plain-
 tife claiming as baſtard and eldeſt ſonne
 entred, becauſe the lay people thinke that
 the eldeſt ſonne, though he bee a baſtard,
 may inherit. The ſame Law it is to ſay that
 ſuch a one was ſeiſed and infeoffed, the te-
 nant and the plaintife claiming by a deed
 of feoffement made before where nothing
 paſſed, &c. becauſe the lay people thinke it
 a good feoffement, though it bee made
 with.

without liuerie. But where the speciall matter is not a matter in Law, or difficult, there the Tenant or defendant must take the generall issue, as if the Tenant say, that hee was seised vntill he was by the pl. disseised, whereupon here-entred, this plea is not sufferable, because all men know that the Tenant in this case is no disseisor: or otherwise if he say, that the plaintife claimes as younger sonne, because that euerie man knoweth, that the younger sonne cannot inherit before the elder. The same law it is if he say, that he leased to the father of the plaintife for terme of life or yeares, or for terme of another mans life, and the plaintife supposing that he had died seised of an estate in fee simple, entred, &c. because in these cases the Lay people doe well vnderstand that he is no disseisor: & therefore in these and in al other like, the tenant shall take the generall issue.

In reall Actions for the mere right when it is in respect of a disseisin done to him or his ancestors, and not founded vpon a seigniorie, as a Writ of Eschete, a writ of right sur disclaimer, &c. the Tenant cannot trauesse the seisin, but may tender halfe a Marke to the King to haue it inquired by the Jurie: and being found that the demandant was not seised in the time whereof he counteth, that shall barre him for euer.

16.E.4.9.

3.E.3.Dr.26.

Prerogative.

The tenant cannot tender halfe a murr
against the King.

The heire or Executours in an Action
brought against them, where they are chargeable
pleading a matter in their owne
knowledge (a) which goeth in perpetual
bar, As for the heire to plead that nothing
descended to him from the same Ancestor,
the Executour to plead a release or acquit-
tance made vnto himselfe, or that hee was
neuer Executor, nor neuer administred as
Executor shall be charged as in their pro-
per dulle, if it passe against them. Other-
wise it is if the Executor plead *Misnomer*,
or another Executour alieue not named in
the Writ, (for that is no barre but onely to
the Writ) or *Orients inter mains* (for that is
no perpetuall bar, for a *Scire facias* lyeth if
they come to haue lands after) or a release,
or acquittance to their Testator: or *Nient le
fait* of their testator, for they cannot haue
knowledge of it. Otherwise it is also if ei-
ther the heire or Executor bee condemned
by a *Nihil dicit*, or confesse the certaintie of
the assets. And in the first case, as where
the heire pleadeth nothing by descent, &c.
which is found against him, the plaintiffe
shall haue an *Elegit* of the moitie of all his
lands as well purchased, as by descent: As
in a *Formedon en Descender*, if the Tenant
plead in barre a warrantie with assets, and
the demaundant said *Rien per descent*, and

(a) 3 & 4 P. &
M. Dy. 149.

21. E. 3. 9.

6 & 7 E. 6 Dy. 81

34 H. 6. 22. Br.

Eues. 22.

6 & 7. E. 6. Dy.
81. Where the heire
is condemned by a
Nihil dicit, execu-
tion shall be of lands
descended by a speci-
all *Elegit* not of his
goods, &c. nor no
Cap. ad satuf. lyeth
against him. 21 E 3
ibid.

it is found that he hath by discent, he shall be barred of all that hee demandeth by his Writ (of how small value that bee which descendeth) because the issue that he tendered is false.

In Writtes of Nouel Disseisin, Nuisance, Mortdancer, Iuris vtrum, & in Endite-
ments and Appelles of Felony, the Defen-
dant may plead in abatement, & ouer in
barre, or take the generall Issue also. As in
a Mortdancer, (a) that he hath nothing
but in right of his wife; or (b) I.S. holdeth
parcell of the land in demaund, not named
in the Writ: and if that bee found against
him, then that he hath abated. In an assise
of Iointenancie, or Misnomer, which are in
Abatement, or any matter in barre: (vnlesse
he confesse a putting out of the Tenant, or
that which amounts to as much, as by plea-
ding a release, or such like) and if that bee
not found, then he hath done no wrong.
In a *Iuris Vtrum* the Tenaunt may plead
Misnomer of the Demaundant, or that a
stranger holdeth parcell not named. And
if it be found, &c. that the demandant hath
receiued his fealtie, &c. And if it be found,
&c. then that it is his Lay fee, and not
Franke Almoigne, &c. In an Enditement,
or Appelle of death, misnomer of himself,
or no such towne; and to the felonie not
guiltie. But he cannot plead a Release, and
to the felonie not guiltie: for by the Re-
lease he hath in a maner confest the felony:
also he may plead a matter in bar, & vpon
Cc that

(a) 40 E. 3. 39.

(b) 1 E. 3. 62.

22 E. 4. 39.

12 E. 3. 107. 108.

4. H. 6. 15.

22 E. 4. 39.

Ibid.

that found against him, then plead not guiltie, though he pleaded it not before.

1.E.5.5.

In Writtes of Nouel Disseisin, and Nuisanc, he may plead a speciall matter that amounteth but to the generall Issue. As in an Assise of Rent by Deane and Chapter, to say that Rescous was made to the predecessor, and no seisin in him, or in any Successor since that time. Though in the presence of him that pleadeth it, it amount to no more, but that the plaintife was neuer seised, so as he could not be disseised.

(a) 9.E.4.21

(b) Stamf. 151.6.

Upon (a) **Enditements of Felonie and Treason**, otherwise it is in Appcales, the defendant being put to answer, which is called an Arraignment, is not allowed counsell, if he denie (b) the fact. For either his conscience perhaps wil sting him to utter the truth, or otherwise by his gesture, countenance, or simplicity of speech, it may be discovered; which the artificiall speech of his Counsell learned, would hide and colour. Also himselfe can best answer to the fact. But if he plead Sanctuarie, or any other matter in Law, then he shall have counsel. A presentment in the last of the rits turne, after the day of the presentment bindeth the partie for euer, and is not trauersible but in cases that touch ones freehold: as that one ought to cleanse the Highway or such like *ratione tenure sue*: therfore the course is to remoue such presentments into the kings Bench by a *Certiorari*, where he may traaverse them.

7.H.7.23.

32.H.8.Dy.13.

41.6.3.27.

5.H.7.3.

CHAP.

CHAP. 33.

Of Confessions.

Confession is when the Defendant confesseth the plaintifes action to be good. The Defendant confessing an enditement of felonie may accuse others, in which case wee call him

an Approver. And one cannot (a) be an Approver but in felonie or Treason. And that vpon an (b) enditement onely, and though it be (c) after not guiltie pleaded, yet before verdict hee may become an approver. But vpon an appeale one cannot bee an approver. Nor without (d) confession of felonie before the Iudges, which confession must be (e) vpon an enditement precedent (that the Iudge may at any time giue iudgement to attaint him) not vpon an arrest for felonie of the same offence. But he cannot approve one that (f) receiued him, for it must be of such an offence as he himselfe did together with the other: nor one that (g) abetted and procured him to commit the felonie, for he confesseth not himselfe guiltie of the same offence, in as much as he cannot abet himselfe.

(a) 9 H. 6 C. 23.

(b) 1 H. 7. 8.

(c) 1 H. 7. ibid.

(d) 1 H. 5. C. 44.

(e) Stat. 143. a.

(f) Stat. 143. a.

(g) 10 E. 4. 14.

Statutes.

Westm. 1. c. 12. Notorious felons which

C c 2

will

will not put themselves vpon an enquest at the Kings suit against them, shall be put to a paine *fort & dure*, as those which refuse to be tried by the Law of the land.

(a) The Stat. 32.
H. 8 cap. 21. so
reciteth is.

Stat. 119.6.

Stat. 116.

One that flyeth to a church (a) or church-
yard, & confesseth before the Coroner when
he cometh, the certaintie of any barre, felo-
nie, where life or member is to be lost be-
fore he be thereof attainted, whether vpon
an enditement or appeale, as that he hath
stolne such or such a thing, killed such or
such a man. But at the first taking of the
Church, it is enough to say he taketh it for
a felonye, which hee hath committed gene-
rally may *abjure*, and so saue himselfe. But
not in case of high Treason, or petie trea-
son, for the Coroner cannot attaint him vpon
his confession thereof, because he is not
his Iudge of such a crime: neither can be his
Iudge as he is Coroner, although he haue a
Commission from the King to do it. And
if the offender, being in the Church, will
of purpose confesse a felonye, to the entent
to escape of treason, yet if the Coroner haue
information that he is charged with a trea-
son, he may not suffer him to *abjure*. And
that for the Kings aduantage, who is to
take more benefit if he be attainted of trea-
son then of felonye, because of the *eschere*.
The same law it is of petie treason, for the
Coroner can no more record his confession
of that then of high Treason: neither may
the Coroner if he be enformed that he haue
committed petie Treason, suffer him to *ab-
iure*

iure of felony, and that in respect of the heinousnesse of the offence, notwithstanding the King be to haue no more aduantage in petie treason then in felonie. Neither can a man abiure for petie larcenie, because he is not to suffer death for it likewise.

Br. Cons. 122.

Abiuration is his (a) oath before the Conroner himselfe to depart the Realme for euer at the time and place set him: going the direct way thither: tarrying there but one fload and ebbe if he can haue passage: and till he can so passe going euery day into the sea by to his knees to assay if he may passe ouer, and if he cannot passe within xl. daies then to put himself againe into the Church as a felon, &c. And this abiuration is an (b) attainer in it selfe (and that the strongest that can be, being by his owne confession) and a (c) forfeiture of his lands. And there is a writ of eschete of land for felonie, *pro qua abiurauit regnum*. And therefore he (d) that is hanged vpon iudgement against him, and becommeth aliue againe, cannot abiure (but an abiuration in that case is an escape) for one cannot haue two iudgements for one offence.

(a) Stam. 119 b.

(b) Stam. 122 c.

(c) 4. El. Pl. 262.

(d) 3. E. 3. Co 33 f

Statutes.

9. E. 2. Stat. de artic. cleri cap 10. Those that abiure may not be molested whilest they are in the street, and whilest they bein the Church their keepers may not tarrie in the Churchyard.

9. E. 2. Stat. de artic. cleri. ca. 13. A Clark

C c 3

shall

shall not be compelled to abiure, but to haue his Clergie.

21. *H. 8. cap. 2.* Immediately after confession, and before abiuration, the felon shall be marked in the hand with an hote Iron with the signe of an A. The felon must take his passage at such a day and time as the Coroner shall limit, else he shall lose the benefit of sanctuarie, and be taken out and further ordered according to his demerits, without restitution to sanctuarie.

22. *H. 8. cap. 14.* If he be found out of the place, he shall dye for it.

22. *H. 8. cap. 12.* All abiurations shall be made to certaine priuiledged places within the Realme, mentioned in that Act, there to remaine during his life.

CHAP. 34.

Of Replication, Reioynder, Surreioynder, &c.

The mutuall pleas of both are the debating before issues, or an issue it selfe.

Debating before issue, is the discussing of the materiall things, to draw it to some one issue. As in an action of trespassse or an assise, if the Defendant claime by a lease from the Plaintife to A. who granteth his terme to B. and to B. the defen-

defendant, the Plaintife must answer onely to his owne lease, for the assignements of A. are but conueyances and not materiall. But in an assise if the defendant deriue his interest from a stranger, and that A. was seised and enfeofed B. who enfeofed C. and C. the Tenant: there the Plaintife may trauerse any of the meane conueyances, for they are all materiall.

Therefore repugnance of a plea vnto it selfe is a fault in pleading, as in an action of Trespasse of his house, and wals broken downe, the Defendant cannot plead touching the house, not guiltie, and as to the breaking downe of the wals iustifying, for this carrieth a repugnancie in it, inasmuch as the house and the wall are all one thing.

So is a departure, where he forfeiterh not the matter of his plea that went before, but commeth in with a new matter. As if the reioynder be a matter puisne, vnderneath the matter of his barre, not aboue and going before it. As in an action of Trespasse, the Defendant pleadeth a descent vnto him of the land, the Plaintife saith, that after the descent the Defendant enfeofed him. Now if the defendant reioyne that the feoffement was vpon condition, and he entered for the condition broken, this is a departure for the matter of the barre, that is the descent, is before the matter of the reioynder, that is to say, the entrie for the condition broken, whereby the feoffement is auoided. So if in an assise, the Defendant

pleadeth the feoffement of I. S. and the Plaintife make title to himselfe by descent, and that he was disseised by I. S. who enfeoffed the defendant: or that he enfeoffed I. S. vpon condition who brake the condition, and afterwards enfeoffed the defendant, &c.

Now if the defendant say that after the disseisin (or condition broken) and after the feoffement of I. S. to the defendant, the Plaintife did release to the defendant, or confirme the estate of the defendant, this is a departure, for that is a matter that groweth after the feoffement pleaded in bar. But if he plead such a release or confirmation from the plaintife to I. S. that is no departure, for it is a matter before the feoffement, or in an action of trespassse for goods, if the defendantentitle himselfe by the gift of I. S. and the plaintife saith, that himselfe was possessed till I. S. tooke them from him, and gaue them to the defendant. Now the defendant may say that after the taking the plaintife gaue them to I. S. who gaue them to the defendant: for although the defendant might haue pleaded these things at the beginning, yet in asmuch as it is pursuing and fortifieth his barre, and no puisne matter vnderneath the title of his barre, but eigne and aboue the matter of his bar, therefore it is no departure. So a plea in barre which is intendible at the Common Law, cannot bee maintained by a matter of custome, or by statute Law. As in an assise the
tenant

tenant pleadeth in bar a deuise vnto himselfe of the land being deuisable by the custome, the plaintife saith that the deuisor was within age at the time of the deuise. Now if the tenant said that by the custome there an infant of 15. yeares of age may make a deuise: This is a departure, for the custome pleaded in bar shal be entended of those that may make a deuise by the Common Law So if in an action of trespassse the defendant plead in bar a lease for 50. yeares from a house of Religion, and the plaintife auoid it by reason it was made within a yeare before the dissolution, and so void by the Statute 31. 8. Now if the defendant will alledge that by the same Statute it is provided that all such leases shall be good for xxj. yeares, and so maintaine the lease to be good for so many yeares, this is a departure: or if one plead a fine, and that being auoided because the parties to the fine had nothing, wil maintaine the fine to be good by the Statute 1. 13. 3. because he had leuied the fine *cestui qui use*. Lastly, when matters are pleaded which offer seuerall issues, that is termed a double plea, and is a fault in pleading As in an assise to plead a feoffment of the ancestor with warrantie. In debt vpon a simple contract to plead payment and an acquittance. In an assise to plead diuers descents of the land in fee simple, for euery of them requireth a seuerall answer. But in an assise to plead diuerse descents

descents in taile, is not double, for one answer maketh an end of all, that is to denie the gift in taile. So as the matter cannot come but to one issue: So in an action of debt to plead fully administred, and so *riens enter mains*, for one answer, affects *enter mains* serueth.

So is it also of two or three matters together with the general conclusion, as in debt vpon an obligation to say, that hee is not lettered, and the deed was read vnto him in another sort: and further, that he deliuered it vpon a condition which is not performed, so not his deed. So to iustifie an arrest for twentie causes of suspicion of felonie, is not double, for one answer serueth *Desuort demesne*. No more to assigne in a Writ of error as many errors as appeare in the record, for in *millo est erratum* answereth them all. But to assigne diuerse errors *en fait* is double, for these are to bee tried by the Countrey. And the reason of all this is, because vpon diuers issues ioyned, if one be found for the party, and another against him, the Court shall be inueigled, and not know how to giue iudgement, whether for him or against him. But to plead a feoffment with warrantie, and relye vpon the warrantie onely is not double, for he cannot plead the warrantie without the feoffment.

Of the first sort are Replication, rejoinder, surrender, &c.

In an assise against many, if each (a) (a) 33. H. 6. 36.
take the whole tenancie severally, & plead (b) 33. H. 6. 36.
(b) severall matters in barre: or (c) one (c) 21 Br. aff. 383
Nul-tort and the other in barre: otherwise
(d) it is if one plead in barre, and the other (d) 44 E. 3. 23.
Ioyntenancie by deed: the Plaintiffe of his
perill must chuse his Tenant. And then
after issue for the whole, that, viz. the Te-
nancie, shall be first enquired of. And being
found for the Plaintiffe, then the other issue
shall bee enquired. Being found against
him and no title made against the tenant
indeed, the writ shall abate. 8. aff. T. 1. 1.
ceribid.

In an action of Trespasse meere trans-
grefe, although the defendant iustifie by
any speciall matter, as in a (a) Trespasse of (a) 19 H. 6. 63.
goods, by commandement of I. S. whose
the propertie is, in (b) assault and battery, (b) 34. H. 6. 16.
or an (c) appeale of mayme, in his owne de- (c) 41. aff. Pl. 21.
fence vpon the plaintifes first assaulking of
him: in false imprisonment by (d) beeing (d) 5. H. 7. 6.
Constable of the Towne, and that the
plaintiffe brake the peace, or (e) by an arrest (e) 2 E. 4. 9.
for suspicion of felonie, or by (f) the com- (f) 22 aff. Pl. 85.
mandement of I. S. to seise the bodie of the
Plaintiffe in ward, by reason his aneestour,
whose heire he is, held of I. S. by Knight
service, &c. yet the Plaintiffe may take issue
that it was done *De son tort demesne*, which
is to say, wrongfully by the Defendant
without answering to that matter. But if
the iustification be by matter of writing or
record, as in false imprisonment, by (a) a (a) 31 H. 6. 3.
warrant of Iustice of peace to arrest him, or

(b) 5. H. 7. 6.

2 E. 4. 9.

(c) 44. E. 3. 18.

22. Aff. Pl. 185.

(d) 12. E. 4. 10.

(e) H. 29. El. C.
B,

(f) B. Roy.

27. H. 8. 7.

a (b) *Capias* that came to him as Sherife to take the body of the plaintife, or if it be any (c) title or licence (d) from the plaintife, there *de son tort demesne* is no plea, but the speciall matter must be answered. So (e) alwayes in a trespassse locall, as of his close broken downe, &c. if the defendant entitle a stranger to the land, whether to the freehold, or though it be but to a lease of it, and iustifie by his commandement. And likewise in a (f) repleuin which is reall, the title or speciall matter must alwayes be traversed. If it bee a trespassse, upon land, the defendant iustifying in some other land then the Plaintife meaneth, the Plaintife may make a new assignement, setting forth the place more specially. As if the defendant iustifie in a place called A. as his freehold, the plaintife may say the place where, &c. is called B. other then the place called A. & then the defendant may plead all anew.

CHAP. 35. Of Issues.

AN Issue is when both the parties toyne vpon somewhat that they referre vnto a triall to make an end of the plea. And it is of the fact, or law of the fact, which is commonly termed by the generall name of issue, when the proper contradiction of that which one allegeth is set downe by the other, which is properly termed a traaverse. As in debt vpon an Obligation for performance of covenants,

nants, and the defendant plead he hath performed all, the plaintife must shew some in certaine which the defendant hath broken, whereupon issue shall be ioyned: but cannot reply that the defendant hath not performed all. For in Lodgicke there be three kinds of contradictions: Generall, when both the propositions are generall, as, All the couenants are broken, None of the couenants are broken. Particular when one is generall, the other particular, as, All the couenants are broken, Some of the couenants are not broken, None of the couenants are broken, Some of the couenants are broken. Proper, when both the propositions are proper, as, This couenant is broken, This couenant is not broken. The two former make no issue in our Law, but the latter onely: and euery issue is of an affirmatiue and a negatiue. **After which if any insufficiencie of pleading appeare in the record, whether the issue be ioyned thereupon, which we call a *leofaile*, or no, the parties must replede or begin a new where the first defect was.** And in this case a Iury is readie at the bar that to passe vpon the issue, shall be discharged. As if the barre be good, and the replication ill, and issue taken vpon it, the iudgement must bee that the plaintife must make a new replication, and the barre shall remaine. So if the barre bee good, and likewise the replication, but the reioynder ill, and the issue taken vpon the reioynder, the defendant must make a new reioynder, and the replication shall remaine.

But

15 H. 7. 2.

33 H. 6. 9.

35 H. 2. Br. replied.

54

7 H. 7. 3.

But if the bar be il, and the replication good and the issue taken vpon it, now they must plead all a new because the barre which is first of all is vicious.

But no replender shall be in an assise, if the Plaintiffe haue disclosed a sufficient title: for in an assise no land in certaine is demanded, but an assise onely prayed. And therefore where a sufficient title is disclosed the Plaintiffe shall haue iudgement vpon seisin and disseisin found for him. And no replender shall bee notwithstanding that the Tenant haue made a (a) vicious barre, or (b) misrecloyned. Otherwise it is if the Plaintiffe take issue vpon an insufficient barre.

(a) 14.H.7. 12.

(b) 5.H.7. 29.

35.H.6 37.

(c) 5 H.7. 29.

If the tender of this issue come on the Plaintiffes part, the forme is, *Et hoc petit quod inquiratur per recordu, vel patriam, &c.* If on the Defendants part, then it is, *Et de hoc petit se super recordum illud vel super patriam.*

19.H.6. 57.

Issue in a writt of right cannot bee toynded, we cal it ioyning of the mise, vpon the meere right, but by the partie himselfe, not by Atturney.

15.H.7. 13.

Where the Plaintiffe in his replication maketh title at large, without trauersing or confessing and auoiding the barre, or any way meddling with it, the Tenant may toyne issue vpon the title by saying, *Veign assise sur la title*, that is, Let the assise come vpon the title, which is called a pleading to the assise at large. This to bee vnderstood when

15 H.7. *ibid.*

5.H.7. 29.

where the title is by a matter *en fait*, but not record, or done (a) in a forraine Countie, for they are not triable by the assise.

And in a personall action, whether trespassse or repleuin where iustification is made for damage fasant, for that is meere in the personallitie, where the title of the land cometh in question, lyeth not till issue toynd. And yet in that case it neuer lyeth for Tenant for life, but onely for tenant for yeares, bailiffe, &c.

- (a) 5.H.7. *ibid*
- (b) 14.H.7. 6.
- (c) 46.E. 3. 11.
- (d) 46.E. 3. 11.
- 10.H.6. 26.
- (e) 14.H.7. 6.
- 4.H.6. 10.

Prerogative.

And in these actions shall be of the King befoze issue toynd onely, though the King be seised but in his naturall capacitie, as in the right of his Duchie of Lancaster.

- 5.E. 4. *aid de Roy*
- 30.
- 3.H.6. 2 Pl. 216.

CHAP. 36.

Of Triall by Iurie.

This being of a matter *en fait*, that is to say, done in the Countrey. For a Iurie shall not be charged with a matter in Law, nor it shall not bee giuen in euidence vnto them. But if they will take knowledge of the Law, they may giue their verdict generally, viz. where a verdict may be giuen at large. As vpon an issue of *Nul tort nul disseisin*. So the Iurie may finde of themselves matters of record

9.H.6. 38.

14.El.Pl. 410.

Old N. B. 171.
The forme of the
Writ of venire facias.

- (a) 41. aff. Pl.
(c) 26. aff. Pl. 28.
(d) 14. H. 4. 19.
(e) 21. H. 6. 30.
(f) 9. H. 6. 63.

23 H. 3. Dy. 30.

record if they will, and although it be not given in evidence. And therefore a fine or common recoverie may be given in evidence without shewing it vnder the great seale, or seale of the Court, or vouching the Roll of the recoverie, for the Iurie may find them if they will. But peradventure they are not bound to find it vpon paine of attaint, vnlesse it be shewed vnder the seale **is triable by the oath of twelue free and lawfull men of the same Countie, indifferently chosen**, whom we call a Iurie, and the making of the Iurie is called a panell or array. And these must be xij. for the verdict of more or lesse, as of (a) xj. or xiiij. (b) is void: free, not (c) villeins, nor (d) aliens: lawfull, for one outlawed may not be a Iuror, because he is not *Legalis homo*, (e) and of the same Countie, for vpon (f) a trespassse locall, as grasse cut downe in the Countie of D. where the trespassse was in the Countie of S. if the defendant plead not guiltie, (as he may) and the Iurie find him guiltie in the Countie of S. the verdict is void. But if they find them guiltie generally, an attaint lyeth. But vpon an issue whether the Executors haue assets in their hands, the Iurie may find the assets in any Countie, for it is but a transitorie thing. Lastly, the Iurie must be indifferently chosen, so as neither the Sherife that maketh it (for that is good cause of challenge to the panell or array) nor the Iurors that are to passe vpon it (for that is good cause of challenge to the pole)

polle) beare either fauour or malice to any partie. As for the Sherife to put in any Iuror at the parties denomination. And either the Sherife or Iuror to be of his (a) see, or his (b) seruant, or within (c) his distresse, whether his tenant (immediate or not immediate, as (d) holding of I. S. who holdeth of the partie) or not his tenant, as where he is to come to the parties hundred, or the party hath a rent charge going out of his land. To be of kin to the partie, for Cosinage in the Sherife is a good principall challenge to the array, and in a Iuror to the Poll: although it be in the ninth degree, and that one cannot be heire to the other of the land in variance. As if husband and wife be vouched (which is entendible for the warrantie and land of the wife) and the Sherife or Iuror be cosin in the ninth degree vnto the husband, the reason whereof is, for the affection which the law intendeth that the one doth carrie to the other. And because one may be heire vnto the other of other land. And therefore it is a good challenge in personall suits also: To haue beene (a) arbitrators on his part in that matter. To (b) haue an action of batterie depending against the partie, or an action of debt by the partie against him, &c. The Iuror to haue (c) taken money for his verdict to haue (d) giuen it before hand, or to haue (e) passed formerly in the same matter: & such other things as of themselves carrie fauour or malice in them, & are called principal challenges. So

D d

of

7. H. 4. 18.

(a) 8. aff. Pl. 23.

(b) 21. E. 4. 67.

(c) 20. H. 6. 39.

for the Sherife.

(d) 38 E. 3. 25.

(e) 38. E. 3. ibid.

(f) 15. E. 4. 18.

Br. chaff. 68.

38. E. 3. ibid. maketh a quare of this

(g) 15. Eliz. Pl.

425. for the Sherife.

21. E. 4. 63. for a

Iuror.

(a) 21. H. 6. 39.

for the Sherife.

3. H. 6. 24 for the

Iuror.

(b) 11. H. 4. 26.

(c) 49. E. 3. 2.

(d) 49. E. 3. 1.

(e) 7. H. 4. 11.

(f) 21. E. 4. 67.
for the sherriffe.

14. H. 7. 2 for a
Iurie.

(g) 49. E. 3. 1.

(h) 14. H. 7. 2.

(i) 11. H. 4. 26.

(k) 20. H. 7. 2.

(l) 14. H. 7. 2.

(m) 18. E. 4. 13.

of those which onely do induce it: as to be the parties (f) master, (g) counsellor, Attur-ny, (h) Steward of his mannor, to (i) sue him in an action of debt, &c. to be (k) of the same societie with him, as if both be of Graies-Inne, or the (l) partie to be within his distresse, or (m) he to haue passed before vpon such another matter.

Statutes.

Westm 2. cap. 38. In an assise no more shall be sommoned but xiiij.

Men aboue lxx. yeares of age continual-ly sicke, or sicke at the time of sommons, shall not be returned in Iuries or assises: nor any that dwell out of the Countie, valesse it be in grand assises.

Artis super chart cap. 9. 34. E 3. cap. 4. Iuries shall bee made of the next people of the Countie.

11. H. 6. cap 1. None dwelling in stews shall be of a Iurie.

9 E. 3 cap. 4. A deed pleaded in a fran- chise shall bee tried in the Countie where the action is brought.

2. E. 6. cap. 14. Vpon stroke or poyson in one Countie, the partie dying in another, an enditement and triall may bee in the Countie where hee dieth. And an appeale
sued

sued there and tried by xij. men of the same Countie.

Likewise the accessaries in one Countie to a murder or felonie in another Countie, shall be indited, arraigned, &c. in the countie where the offence of accessarie is done.

33. *H. 8. cap. 20.* Enditement of a person lunaticke, being at the time of confession of treason before the Councell, of perfect memorie, and so certified by them, shall be tried by freeholders of any Shire to bee appointed by commission. And the triall whether he be culpable or not, shall be there in his absence.

33. *H. 8. cap. 23.* Confession of Treason, Misprision of Treason, or murder beeing made before the Councell, or three of them, or they vehemently suspecting one of such an offence, it shall be enquired, heard, and determined by Commission out of the Chancerie, in the shire or place limited in that Commission, by such lawfull persons as shall be returned, wherein no challenge for the shire or hundred shall be allowed.

28. *H. 8. cap. 13.* & 27. *H. 8. cap. 4.* All treasons, felonies, robberies, murders, and confederacies within the Admiralls iurisdiction shall bee enquired and determined in such forme of Law as if it were done upon, the land by commission directed to the Admirall and three or foure other assigned

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by the Lord Chancellor in the shire limited in their commission, where no challenge shall be for the hundred.

32. *H. 8. cap. 4.* The enditement and arraignment of treasons and misprision of treasons in Wales, or else where the writs out of the Chancery of England run not, shall be in such shires, and before such commissioners as the King shall appoint.

35. *H. 8. cap. 2.* All treasons, misprisions, or concealments of Treason done out of England, shall be enquired, heard, and determined in the Kings Bench by men of that shire where the Bench sitteth, or else before Commissioners, and in such shire as shall be limited by commission.

1. & 2. *Ph & Mar. cap.* Trials for treason shall be according to the course of the common Law.

23. *E. 3. cap. 3.* No enditor be put in requests vpon the deliuerance of enditees of felonies or trespasse.

Westm. 2. cap. 38. None shall bee put in assises or Iuries triable in their owne shire, but such as haue xx. s. a yeare freehold, nor in assises triable out of their owne shire, vnlesse they haue xl. s.

21. *E. 1. De penend' in Assisa.* None shall be put in assises triable out of their owne shire but such as haue lands to the yearly value of C. s. nor in assises triable in their owne shire, vnlesse they haue xl. s.

2. **H. 5. cap. 3.** None shall passe in an enquest vpon the triall of the death of a man, nor betweene partie and partie in plea real or personall, whereof the debt and damages amount to xl marks, vnlesse he haue lands of the yearely value of xl. s.

33. **H. 8. cap. 13.** In Cities, Borowghes, or corporate Townes, an inhabitant beeing worth xl. l. in goods, shall be admitted in triall of murders and felonies in euery Session and gaole deliuerie for that Towne, though he haue no freehold.

35. **H. 8. cap. 6. made perpetuall.**

2. **E. 6. cap. 32.** The cause of hauing xl. s. value, must be inserted in the *venire facias*: and bee of lands out of antient demesne. Where that clause needs not, the Iurors must dispend some land of freehold out of antient demesne within the Countie where the issue is to be tried.

27. **Eliz. cap. 6.** Where the Iurors returned in the Kings Bench, Common place, Exchequer, or before Iustices of assise, ought to haue xl. s. freehold, there they shall from hencefoorth haue xl. l. yearely freehold out of antient demesne, in the Countie where the issue is to be tried. And the clause thereof inserted in the *venire facias*. These two Statutes extend not to corporations.

27. **Eliz. cap. 7.** No Bailife of libertie shall returne to the Sherife, or deliuer vnto him

the name of any person to be returned in a Iurie without some addition whereby the partie may be knowne. Neither shall the Iurie, &c. returne any Iuror out of a libertie without some addition whereby he may be knowne, nor within a libertie with other addition than that is deliuered vnto him by the Baylife, &c.

8. *H. 4. cap. 3.* Euerie Iuror returned within the Countie of Middlesex shall be called the fourth day of the returne, and appearing at the same day, their appearance shall be recorded, and they shall not be amerced nor lose their issues.

5 *E. 3. cap. 10.* A Iuror taking of the one part or of the other, shall neuer be of Iurie more. And besides imprisoned.

34. *E. 3. cap. 8.* The partie or any stranger may sue him for it.

38. *E. 3. cap. 12.* And both the Iurors, and the embracers to procure it, being thereof attainted, shall pay ten times so much as he hath taken.

Justit. 2. cap. 30. Assises of nouell disseisin, mortdancester, and attaints, shall be taken thrice a yeare by two Iustices assigned, associated with one or two discreet Knights in the Shire where they come.

In euerie shire before their departure they shall appoint the day of their returne: And adiourne the assises if the taking be by any

any meanes deferred.

Also in assises of mondancesser being respited, they may adiourne into the Bench if need be. And when it cometh to the taking of the assise, the Iustices of the Bench shall send it backe againe to them.

All pleas in either of the Benches that require small examination, shall be determined before them.

27. E. 1. cap. 4. Statutum de finibus leuatis. Such enquests being taken, shall be returned into the Bench, and there iudgement shall be giuen.

Enquests and Recognisances determinable before Iustices of either Bench, shall be taken in vacation time, before any of the Iustices before whom the plea is brought, being associate to one Knight of the same shire, where such enquests shall passe, vntill it require great examination.

12. E. 2. cap. 3. Stat Eborac. Enquests in pleas of land (that require no great examination) shall be taken in the Countie before a Iustice of the place where the plea is accompanied, with a substantiall man of the countrey, Knight or other, so that a certaine day be giuen in the Bench, and a certaine day and place in the countrey, in presence of the parties demanding of the same.

Enquests in pleas of land that require no great examination, shall be taken in the Countrey (in manner abovesaid) before

two Iustices of the Bench.

2. *E. 3. cap. 17.* All such enquests in plea of land shall hereafter be taken as well of the request of the tenant, as demaundant.

41. *E. 3. cap. 11.* *Nisi prius* shall not be granted before the name of the Iurors returned.

7. *R. 2. ca. 7.* In all manner of pleas where an *Nisi prius* is grantable of office after the great distresse returned, and thrice serued before the Iustices against the Iurors, and thereupon the parties demanded if any of the said parties will pursue, or if the parties refuse to haue *Nisi prius* in the case, then at the suite of any of the Iurors that is present a *nisi prius* shal be granted for ending of the quarrell.

14. *E. 3. cap. 16.* The *Nisi prius* in the Kings Bench shall be granted before a Iustice of that place, if any Iustice of that place may well go into those parts. Else before a Iustice of the Common place, &c. otherwise the chiefe Baron being a man of the Law, if, &c. or else before the Iustices assigned to take assises in those parts. So that one of them be a Iustice of one Bench or other, or the Kings Sericant sworne.

18. *Eliz. cap. 12.* The chiefe Iustice of England vpon issue loyned in the Kings Bench or Chancerie, and the chiefe Iustice of

of the Common pleas, and chiefe Baron of the Exchequer, vpon issues ioyned in their seuerall Courts (or in their absence two other Iustices or Barons) or made Iustices of *nisi prius* for the Countie of Middlesex, in all issues ioyned to set in Westm Hall within the Terme, or foure dayes after.

4. *E. 3. cap. 11. confirmed 7 Ric. 2. cap. 15.* Iustices of *nisi prius* shall enquire, heare, and determine, as well at the Kings suite as the parties, all mainteyners, conspirators, makers of confederacie, and committors of Champertie, and all other things conteyned in the sayd Article, as well as Iustices of Eyre should doe, if they were in the same Countie.

14. *H. 6. cap. 1.* Iustices of *nisi prius* haue power in cases of felony and treason as well vpon acquittale as attainder, and thereupon to award execution.

Stat Eboꝝaꝝ. 12. E. 2. cap. 2. Vpon a deed denied where witnesses are named, processe shall be awarded against the witnesses if they come not at the grand distresse, or vpon a *nihil non inuentus* returned, yet the taking of the enquest shall not bee deferred. If he come at the grand, and the enquest remaineth vntaken for some cause, the witnesses shall haue *idem dies*, and not appearing, then the first issues returned vpon them shall be forfeit, and the enquest taken, notwithstanding their absence.

AN

7.H.4.17.
36.H.8.Dy. 61.

An enquest shall be taken notwithstanding the absence of witnesses dwelling in a franchise where the Kings Writ runneth not. **Four** of the **Jurie** must also be of the same hundred, and so many are enough though it be in an attaint where the **Jurie** is **xxiiij**. In an information vpon the Statute of pluralitie of farmes, for hauing 7. Farmes in 7. Townes in foure seuerall hundreds; If foure of the **Jurie** haue any thing, or dwell within any of the foure seuerall hundreds it is sufficient.

Statutes.

15.H.8.cap 6. made perpetuall. 2. E. 6. cap. 32. Sixe sufficient Hundreds shall be returned in euerie **Jurie**.

27. Eliz. cap. 6. If two sufficient hundreds appeare in any personal action, it is enough.

If the thing in issue lye in the notice of two seuerall Counties, and not of one onely, for (a) onely two Counties may ioyne, and no more. And two may though they be not the next, as Kent & Deuonshire, the **Jurie** shall be made (b) equally out of both. That is, sixe out of the one, and sixe out of the other. And this wee call a Ioynder of Counties, as in (c) an action of trespassse, if the defendand iustifie for common appendant to land in another Countie: or in a writ of annuities and Count of a seisin in another Countie then where the Church is, out of which the annuities goeth.

(a) 15 Eliz.

(b) 49.4f. Pl. 1. r.

(c) 49. E. 3. 19.
21. H. 6. 3.

Statutes.

7. Ric. 1. cap. 10. An assise of nouell disseisin of rent out of the Tenements in diuerse Counties, shall be in the confine of the said Counties.

But upon an enditement of an offence against the Crowne, the triall shall neuer be by ioynder of Counties. Therefore an enditement that one stroke I S. in one countie, of which stroke hee died in another Countie, is no good enditement, because it cannot be tried, for that the Counties cannot ioyne in an enditement. And therefore before the Statute 2. and 3. E. 6. (which altereth the law in this case) they were wont to carrie the corps into the Countie wherethe stroke was. But otherwise it is in an appeale.

4. H. 7. Cas. 60.
6. H. 7. 10.

But if the Defendant plead in any action, as in a *homine replegiando*, or though it be but in a writ of trespassse or debt, that the Plaintiffe is a billein regardant to a mannoz of his in another Countie, yet the same shall bee tried in the Countie where the writ is brought. And this is in *Faorem libertatis*.

19. H. 6. 11. by the
common law.
40. E. 3. 36.

28. E. 3. cap. 1. confirmed. 2. H. 6. cap. 23.
In euery suit betweene an Alien and a Demesne (though the King bee a partie) the one halfe of the Iurie shall be the Aliens. If so many be in that visne, and if there be
not

not to that number, then so many as be there not parties, nor with the partie to the suite.

2. Mar. Pl. 117.

Where a Peere of the Realme is party to the action, a Knight must be returned to the Iurie.

Statutes.

Magn chart cap. 29. A Peere of the Realme vpon an enditement of felonie or treason shall be tried by his Peeres.

20. H. 6. cap. 9. Duchesses, Baronesses, Countesses, sole or married, shall be tried (in such cases) as Peeres of the Realme. **In a Court of Pipowders the triall is by the Merchants.**

*Preamble of the
Stat. 7. E. 4. ca. 2.
so reciteth it.*

39. E. 3. 2.

39. E. 3. 2.

1. Mar. Dy. 98.

*There must be 12.
beside the four
Knights.*

Bras. 426

The Iurie in a writ of right is called the Grand Assise. Being foure Knights, or other in default of Knights, chusing a Iurie of 12. vnto them. So note xvj in all, for the grand Iurie is alwayes aboue xij. and therefore no attaint lyeth for him that loseth in a writ of right, because it passeth by the grand assise which is more then xij.

Challenges are here allowed for the parties (if they will) both to the array and to the pols. And whether to the pannell or the pols, are to be tried by some of the Jurors, if it be (a) before any Jurors sworn, the Court shall chuse the Triors, when any Iurors are sworne they must trie it.

*** Challenge to the array is when the Iurie is not sufficiently empanelled vpon the**

(a) 27. H. 8. 26.

could

cause of challenge to the Sherife, and afterwards to the Coroners, who by reason of iust exception against the Sherife made or should make the array, the (d) Court must chuse certains named Esloirs, (e) where the parties shall neuer have challenge to the whole array. Challenge to the poll is when any of the Jurors are insufficient to passe vpon the triall. This challenge must be taken before the pannell be perused: For if the plaintife challenge one, and when the pannell is perused, the defendant challenge the same person, yet the plaintife may release his challenge, & then the Juror shall not be drawne, because the defendants challenge is nothing worth, in that it was not made till the pannell was perused, and shall be tried by two of the Jurors chosen by the Court, against whom no challenge shall be admitted, but challenges that sound not in reproch of the Juror, as to be (a) of counsell with the party, or (b) within his distresse, to haue (c) nothing within the hundred, or (d) not sufficient freehold, shall be examined vpon his oath, which we call an examination vpon a *voyri dire*. He that challenged the array if it passe against him, or (which is as strong) if he release it, shall neuer challenge the polls without shewing cause presently, which shall be tried out of hand. Before the Clark passe thorough the pannell. So shall not any other challenge. And after challenge to a Juror for one cause, as fauour, &c. which passeth

(e) 14. H. 7. 31.

4. H. 7. 3.

(d) 8. H. 6. 12.

15. E. 4. 24.

(e) 15. E. 4. 8.

27. H. 8. 26.

27. H. 8. 26.

(a) 49 E. 3. 1.

(b) 3. H. 6. 36.

(c) 19. H. 6. 9.

(d) 21. H. 7. 29.

27. H. 8. 26.

(e) 7. H. 4. 46.

7. E. 4. 17.

passeth against the challenger, he shall not challenge him for another, as for having nothing in the hundred. &c.

*Stam. 157. b. Do B.
Sr. p Br. chall. 11.
in an appeal.*

In enditements and appeales of felony the defendant may challenge xxv. Jurors without shewing cause which is called a peremptorie challenge.

Statutes.

22. H. 8. cap. 14. No person arraigned for any petie treason, murder, or felonie, shall be admitted to any peremptorie challenge, above the number of twentie.

20 E. 4. 11.
Stam. 159. a.

When there lacketh some to fill the Jury, as the greater part being returned dead, or not appearing. But if all the pols be challenged and drawne, there no tales shall be, but a new *venire facias* for tales referred in (*quales*) some like thing, other of the same sort shall be taken, for there may bee many tales one after another, (a) till it bee full, which we call a *Tales*, which must bee (b) even number (c) lesse then the prime pall pannell, As a *decem tales*, *ofo tales*, or in an attaint where the Iurie is xxiii. tales, &c. And (d) everie tales must be of lesse number then other. As after an *Ofo tales*, a *sex tales*, but not a *decem tales*, nor a *Ofo tales* againe.

(a) *Stam. 135 c.*

(b) *Bract tales 11*

(c) *37. H. 6. 12.*

(d) *14 H. 7. 3.*

Statutes.

35. H. 8. cap. 6. made perpetuall. 2. c.

cap. 32. A Tales may be made vp before Iustices of Assise or *Nisi prius* of able persons of the same Countie, then present at the prayer of the plaintife or demandant.

4 E. 1. Ph. & Ma cap 7. So for the King vpon request by any authorised thereunto, or assigned of the Court, or by the partie that followeth vpon a penal statute as wel for the King as for himselfe.

14. El. Cap. 9. Such a *Tales de circumcibus* before the Iustices of *Nisi prius* shall be granted at the prayer of the defendant or auowant.

But in *Enditements* and *Appeales* that touch life, a *Tales* may be of a greater number than the principall Panell. As a xl *Tales*, or as many as the Court wil award, and that is in respect of the peremptorie challenge of xxxv.

The Jurie being charged, may neither eat nor drinke (but by leave of the Iustices) before their verdict given; and doing it before they be agreed, it maketh their verdict void. After they be agreed, it is but fineable.

The Jurie vpon arraignment either at the (a) Kings suit, (b) or in an Appeale acquitting one that was found guilty of the (c) death of a man vpon an enquire (d) by the Coroners *Super visum corporis* must find who did the fact. But not vpon an *Enditement* (e) before the Sherife or Iustices of

14 H. 7. 7.

30 H. 7. 3.
6 H. 8. D. 3.

(a) 14 H. 7. 3.
(b) 14 H. 7. *ibid.*
(c) 13 E. 4. 3.
4 E. 6. 12.
(d) 13 E. 4. *ibid.*
4 E. 6. *ibid.*
(e) 14 H. 7. *ibid.*

(f) 13. E. 4. *ibid.*
4 E. 6. *ibid.*

7. E. 6. Pl. 91.
ibid.

of peace, for that is not of Record, as the finding before the Coroner is, (f) neither doth this take place in an acquittale vpon an Enditement for the felonious taking of goods.

The Iurie in an Assise of Nouel disseisin (which are there themselves properly called an assise) shall inquire of the plea in abatement, though the issue be ioyned vpon the seisin and disseisin. And therefore no plea in Abatement is there answerable.

34. C. 1. De Coniunctim seoffatis. The defendant in Assise alledging iointenancie of his part with a stranger by Deed, the plaintiff may auer him to be sole tenant, whereupon Proceſſe shall be made against both the defendant and the stranger. And if at the day both of them iustifie the seoffment, they shall maintaine the exception, and further answer to the Assise as if the original had been purchased against him iointly. If the exception be prooued false by the Assise, they shall haue a yeares imprisonment though the assise passe for them. If the defendant absent himselfe at the day, the Assise shall passe against him by default, though the stranger appeare and iustifie the Deede. Whither both, or one appeare, if it be found by the Assise that the Exception was truly alledged, the Assise shall passe no further, but the Writ shall abate. Such an Exception shall not be alledged

ledged by the Bailife of any Tenant. The like processes in assises of *Mortdancer* and *Iuris ultimum*.

An Infant bringing an Assise, if a matter en fait, that is, done in the same Countie be pleaded against him, whether in Abatement, as in an assise of rent, that he had made his plaint of the same land whence he supposeth this rent to bee issuing, or in bar, (b) as the Deed of his Ancestour, with warrantie, the Jury shall inquire of all the circumstances. Otherwise it is in a Writ (c) of *Entrie sur disseisin*, or other (d) *Præcipe qd reddat*: for there the point put in issue, and no other, shall be tried by the Jurors. Otherwise it is also in an Assise vpon pleading a recouerie (e) against him, or other matter of Record: in that case he must answer, and the Jury shall not inquire of the circumstances, for the Court shal plead and maintaine for him.

The like inquire of the circumstances shall be, if in an assise brought against him he plead to the assise at large. Otherwise it is if he plead in bar, for there if the plaintiff make himself title as by a statute marchant &c. and the infant traaverse the title which is found against him, the plaintiff shal haue iudgment without inquiring of the circumstances, because the issue is taken out of the point of the assise, and therefore is al one as if the infant were of full age. So that it is better for an infant to plead vnto the assise at large, than otherwise.

Be

The

(a) 11. Aff. pl. 6

(b) 48. E. 3. 33.

(c) 9. E. 4. 34.

(d) 48. E. 3. 34. ibid.

(e) 48. E. 3. 34. ibid.

38. Aff. pl. 28.

The fourth Booke

The forme of an Assise of novel Disseisin
 this, *Rex vic' salutem. Quassus est nobis A. qd*
B. iniuste, & sine iudicio disseisuit eū de liberi
tenemento suo in N. infra triginta annos iā v-
timos elapsos. Et ideo tibi præc' qd si prædict' A.
fecerit te secuti de clam' suo p' os tunc fac' n-
nement' illud reseisum de catallis que in ipso
capit', & ipsum ten' cum catall. esse in pacet.
que ad proximā assisam, cum Iustic' n' i in pa-
tes ill' venerint. Et in earum fac' 12 liberos &
legales homines de visum illo videre tan' illud,
& nomino eorū imbreuiari fac'. Et sum' eis per
 bonos sum' qd sint corā præfat' Iustic' n' i ad
 præfatā assisam parati inde facere recogn' Et
 pona per vadiū & saluos pleg' præd. B. vel baliū
 suū, si ipse inuentus non fuerit qd tunc sit ibi ad
 illud recogn' ant'. Et habeas ibi sum' nomina
 pleg' : & hoc breue. Teste, &c.

14. El. D. 310. for
 ad,

40. E. 3. 48.
 39. Ass. pl. 13.

If the tenant in a Mortdancer (bee it
 tenant of the land, or tenant by his waran-
 ty) traverse any point of the writ, as the dy-
 ing seised of his Ancestor, &c. which goeth
 in abatement of the writ, yet the Jury shall
 inquire of all the points: as whether the de-
 mandant be next heire, & whether his an-
 cestor died within fiftie yeares, &c. and any
 one found against the demandant, abateth
 the writ. But a plea in bar of the assise by
 matter of record, releas, collateral warranty
 or such other matter as is out of the three
 points of the Assise, is peremptorie to the
 Tenaunt, if it passe against him. And if
 such a plea in Barre bee found against
 the Tenaunt, and yet the Jurie inquire
 fur-

further, and find one of the points of the writ against the Demaundant, as that his ancestor died not seised, &c. he shall recover notwithstanding that, for such an enquire should not bee vpon a plea in barre. *Dyer* thinketh it to be so likewise, where the Tenaunt voucheth, and the Demaundant doth counterplead the voucher, viz. that in that case though the counterplea be found for the Demaundant, yet that all the points must be enquired and found for the Demaundant, or else he shall not recover. But *Fitzherbert* thinketh otherwise in that case, because it is a plea in barre, and not to the Writ.

For the Juries direction in their verdict greater libertie is permitted in pleading, a matter doubtfull in Law, for a Traverſe may be omitted. As in debt against an Executor, it is a good plea to say, Administration was committed to him, and therefore he should be named Administrator, and not executor, without traverſing that he is not Executor, for the lay people know no difference betweene one administering as Executor and one administering as Administrator. p. H. 4. 31.

The speciall matter may be pleaded together with the generall issue, &c. As that the Obligation put in suite, was sealed by him and deliuered to A. to keepe till certaine Indentures were made betweene the Plaintiffe and him, before which Indentures made, the Plaintiffe tooke the Obligation p. H. 4. 31.

out of the possession of A. So is it not his deed. This is good, and yet by this generall conclusion the matter precedent shall not be waied, for it were perillous to put the speciall matter in the mouth of the Lay people.

The Count may be abridged befoze verdict, so as the originall remaine true, as in an assise of his freehold, and make his plaint of land and rent, he may abridge it for the rent. In an assise of his freehold in D. and demand two mannors in D. he may abridge his plaint for one. But being of his freehold in D. and S. and demand one manor extending into both, he cannot abridge either of them, for then the writ remaineth not true. In a writ of wast and assigne it among other things, in racing of a Copper fixed to the soile, he may abridge the wast assigned in that, so as thereby he falsifie not his writ. But if the writ bee *Quare vasum fecit in domibus boscis & gardinis*, he cannot abridge the wast suppoed in *domibus*. In a writ of ward *De custodia terre et heredis*, and count of the mannor of D. and xv. acres of land, which in truth are parcell of the mannor, and pleaded by the defendant in abatement of the writ: hee may abridge his demand of the xv. acres. In trespassse *de bonis et catallis captis*, and count of money taken away (for which this forme will not serue, the money must needs bee expressed in the writ) hee may abridge the count touching that.

14. Aff. Pl. 9.

4. E. 4. 33.

14. H. 6. 4.

10. El. Dy. 172.

39. E. 3. 10.

39. E. 3. 20.

Br. abridgem. 111.

Statutes.

21. H. 8. cap. 3. The demaund of a thing entire may bee abridged before verdict, though thereby the writ become false. After acquittale vpon an appeale of enditement of felonie or treason, he shall neuer be drawn in question for the same offence againe. Therefore vpon an enditement of manslaughter or murder, the Iustices (by discretion) were wont not to proceed to arraignment till the yeare and the day were past, for otherwise if he should bee acquitted vpon his arraignment, the parties appeale were lost.

22. E. 4. Cir. 44.

CHAP. 37.

of Triall by Battaile.

In (a) writs of right and in appeales (b) that touch life, triall may be by battaile at the Defendants choice. Therefore (c) the Demaundant in a Writ of right had neede alwayes to haue his Champion readie, else he may happen to be deceiued.

The battaile in a writ of right must be all by Champions. Therefore in a writ of right an Infant may ioyne the *Mise* & trie it by battaile. So can he not in an appeale, for there it must be done in proper person:

Ec 3

which

(a) Old Nat. Br. 1

(b) See the manner of waiving battaile and performing it.

9. H. 4. 3. in an ap-

peale of robbery

17. E. 3. 2 in an ap-

peale of murder.

(c) Old N. B. 100.

9. E. 4. 35.

(a) Br. Chal. 196.

(b) 3. H. 6. 55.

(c) Bracton.

Westm. 1. cap. 40.
so reciteth it.

which Champions must bee (a) freemen, not villeins, & (b) so is the issue takē that he is readie to defend it by the body of L. S. a freeman. Therefore (c) for the Lord to offer his villein for his Champion in a writ of right, or in an appeale, is a manumission of him. And the Demaundants champion must haue seene him or his ancestors in possession, and thereof take his oath.

Statutes.

Westm. 1. ca. 40. Touching the oaths of the Champions it is thus prouided, because it seldome happened, but that the Champion of the demaundant is forsworne, in that he sweareth that hee or his father saw the seisin of the land or his ancestor. And that his father commanded him to deraigne the right, that from henceforth the Champion of the demaundant shall not be compelled so to swear.

9. E. 4. 35.

(a) 1. aff. Pl. 6.

(b) 22. E. 4. 19.

(c) 6. H. 3. Cora.
411.

The battaile in an appeale must bee in proper person. And therefore there the Defendant is restrained from the choise of battaile, and must needs trie it by Iurie. If there be any notorious presumption of the fact in him, as that hee brake prison, or escaped by flight beeing led towards prison for it, or was (b) endited for it. So in an appeale of murder, that he was taken in the act with a (c) bloody knife, in an appeale of robberie, that vpon fresh suite and hue and crie hee was taken with the manner, hauing

having some of the money about him, or of imbecillitie in the Plaintiffe, as if he bee maymed, or within age, &c. 22.E.4.29.

But against a Peere of the Realme bringing an appeale, the Defendant shall not wage battaile, much lesse against the king either vpon an enditement or appeale. *Discourse of the Cust. of London fol. 13. Stat. 108.*

6.Ric.2.cap.6.Ousteth battaile in an appeale of rape.

CHAP. 38.

Of Triall by witnesse.

If a writ of dower issue taken vpon the death of her husband shall bee tried by witnesses. So shall no other case in the Law. 3.H.6.23.

CHAP. 39.

Of Triall by wager of Law.

In some cases also the triall shall bee by the Defendants oath, which wee call waging of his Law. As 1. where the tenant in a *præcipe quod reddat* alledgeth that he was not lawfully summoned according to the Law of the land. 2. in mere personall contracts, wee call them simple contracts, as (a) debts for money lent, or (a) 1.H.6.1.

(c) 2. E. 4. 1.

34. H. 8. Tr. ley 24.

2^{or} 97.

18. E. 4. 23.

39. H. 6. 35.

27. H. 8. 22.

18. H. 8. 3.

15. E. 4. 25.

(b) 23. E. 3. 40.

(c) 11. H. 6. 48.

rent vpon a lease for yeares of a stocke of sheepe, or such like : (but (c) not vpon a lease of land. And though it be of land stored with beasts, yet the defendant shall not wage his Law for the rent due for the beasts, for it is all but one entire contract) detinue of a horse, or other personal thing: but not of a deed indented, or obligation, or of a lease for yeares of land, nor in an action vpon the case, for it is not by reason of any contract **growing without deed**, for in debt vpon sale of a horse for x.l. if the plaintiffe haue a specialtie of it, he shall estoppe the defendant to wage his Law. But vpon detinue and count of a bailement by deed, yet the defendant may wage his Law, for detinue is the cause of the action, which may bee discharged by matter *en fait*, as the defendants redeliuerie, or the plaintiffes taking of it backe againe, &c. or **pruittie of others**, for in detinue vpon a bailement by another mans hand, the defendant may wage his Law, because he is not to answer to the bailement, but to the detinue. So in debt vpon a Contract by another mans hand. But not in accompt vpon receipt by another mans hand, for there he must answer to the receipt: **the defendant may wage his law. Therefore in such kind of actions executors are not chargable**, as in debt vpon sale of goods to the Testator, & (b) though the partie haue a taile ensealed of it, for that is no specialtie: or for (c) wages due by the Testator vpon a retainer. Otherwise it is in such

such an action brought by a Laborer (who is bound by Statute to serue) in (d) debt vpon arrerages of an account made by the Testator before Auditors (who are Iudges of record) or (e) vpon a lease for yeares though it bee made without deed, for in none of these cases the testator could wage his law.

(d) 10 H. 6.
Execut. 31.

(e) Br. Execut. 33.

Prerogative.

No wager of Law shall bee against the King. Therefore in an attachment vpon a prohibition the partie shall not wage his law that he did sue forward contrary to the Kings prohibition, for the King is *quodammodo* party of the contempt. And for this cause also, debt vpon a simple contract shall not be forfeit to the King by outlawry, for then the partie were in worse case then before, where he might haue waged his Law.

24 E. 3. 39.
18 E. 3. 4.

50 E. 3. 5.

Statutes.

Magn chart. cap 28. Wager of Law shall not bee admitted without credible witnesses,

§. 4. cap 8. In actions of debt vpon the arrerages of an accompt sayning to the intent (to put the defendants from their law) that the same was found before their Apprentices or seruants Auditors assigned in, shall be in the Iudges discretion vpon examination

mination of the Attornies, or whom else they please to receiue, or oust the defendants of their law.

12 H. 7. 12.

3. In plaints in Court Barons for personall things vnder 40. s. yet (by prescription) it may be by Iuric: which is against the common course and order of it.

CHAP. 40.

Of Demurrers.

7. E. 6. Pl. 85.

A Issue of the Law which we call a demurrer, is when admitting the matters alledged either of them resteth in the iudgement of the Law.

The forme of ioyning a demurre is, *Et præd. quer' dicit quod placitum præd. definitum sufficiens in lege existit ad ipsum, the Plaintife, ab actione sua præd. &c. præcludend. quodque ipse ad placitum illud modo & forma placitatum necesse non habet, nec per legem terre tenetur respondere, unde pro defectu sufficient. responsionis petit Iudicium, &c. Et præd. Def. ex quo ipse sufficient. mater in lege ad præd. quer' ab actione sua præd. versus eum habend. præcludend. superius allegauit quam ipse paratus est verificare, quam quidem mater præd. quer' non dedicit, nec ad eam equaliter respondet, sed verificationem illam admittere recusat petit Iudicium: & quod præd. quer' ab actione sua præd. versus eum habend. præcludatur.*

Ths

This being loyned vpon an exception 50.E.3.20.
to the original it leise of count for some
saile appearing in it, both onely vaine the
defendant to make a better answer, which
we call a *respondes ouster*, if it passe against
him.

CHAP. 41.

Of Apparence.

Thus farre concerning pleading.
The other meane acts are Ap-
parance, and Continuance, of Ju-
diciall proceſſe.

Apparance is the parties com-
ming into the Court where vpon (a) Co-
mon day giuen the fourth day after the be-
rie day is allowed, and so are all entries,
obtulit se quarto die post. But so is it not vpon
a certaine day giuen vnto him, as Monday,
Tuesday, or such like.

(a) 12.H.4.24.
1.H.6.4.
(b) F.N.B.35 a.
1.H.6.14.

When the partie for not appearing
shoud haue some great losse of corporate
patne, as to haue a Charter of pardon al-
lowed where one before was outlawed at
his suite, at a *Sequatur sub suo periculo*, when
if he appeare not, the land is lost: in a reple-
uin, *sicut pluries*, when a *Capias* in *Withernam*
is to go against him, &c. hee may appeare
though the officers retorne for he not to
it, as if in the two first cases hee retorne a
nihil

48.E.3.1.

7.E.4.15.
3.H.6.14.
3.H.6.14.

nihil, or (that the beasts be esloined) in the latter.

8. H. 6. 3.
3. H. 6. 13.
3. H. 6. 30.
8. H. 6. *ibid.*
3. H. 6. 14.

10. *aff. Pl.* 12. *in an*
assise.
Old N. Br. 46.

48. E. 3. 14.
Br Som & Sen. 9.
7. H. 6. 39. 41.
Br. de. *ault.* 34.

(a) 7. H. 6. *ibid.*
(b) 38 H. 6. 33.
(c) 18. E. 4. 7.

9. H. 5. 5.
35. H. 6. 33.

If the Plaintiff will not appeare when he is demanded at the day, which is called a *non suit*, or say in Court that hee will not sue forwards, which is called a *retraxit*, and alwayes of record, this is peremptorie, and loseth him his action. But in real actions brought by many, if one will not prosecute the rest may alone. Except in the writ *De nativo habendo*, that is, *fauorem libertati*.

For executors also Sommons & Default lyeth in personal actions.

If the defendant will not plead, which is a *nihil dicit*, this in all actions, real and personall, is peremptorie, and loseth the action.

So in personall actions if hee appeare, and the (a) same terme or otherwise, after (b) plea or (c) demurrer ioyned make default. And this default shall neuer be saved, how good cause soeuer he haue to excuse it, as fall of waters, imprisonment, &c. for to appeare and plead, and not to maintaine it, is a kinde of *nihil dicit*. But either of the parties may for once, for ones common esfoynelyeth not after another without mesn degrees be excused of apparance, by an esfoyne which lyeth not for him that appeareth in proper person (for it is to excuse his absence, wherunto his presence is contrary) nor that commeth in by *exigent*, or *Cepi corpus* (for he abideth in ward, or by mainprise and therefore cannot make default) if they

cast

cast an effoine, that is to say, Demand it the first day, or any of the foure dayes, vnielſe the other cast an exception, that is to say, enter an exception that no effoine be received. And the fourth day the effoine must either be allowed (and then it is said to be adjudged and adiourned) or disallowed. But vpon enery meane apparance a new effoin lyeth, (a) though one were cast before (for the Pl and Def. if they list, may fouch infinitely by the common Law) As after issue vpon a custome bastardie, or *ne unque acōple en loyall matrimony*, at the day of the certifying the defendant may cast an effoyne: After effoine of the demaundant, if the Tenant at the second day bee effoined, and at the third day demand the view and hath it. Now at the day after the view, he may bee effoined againe, and at the day after that the demaundant vpon a wager of law in debt and day giuen to doe it, if the plaintife be effoined at the day, and at the day giuen by the effoine the defendant bee effoined, now the plaintife at the day may be effoined againe.

18.6.44

(a) 27.H.6.2.
21.E.4.16.

39.H.6.29.

27.H.6.2.

And this is called *essoīn de male venir*, or the common effoine. Beside which effoinnes for speciall causes, as of being beyond sea, going *ad terram sanctam*, of the Kings seruice, & *d malo lecti* are allowed And haue (a) a peare & a daies adiournment, whereupon an (b) oath must bee taken that the cause is true

(a) 27.H.6.1.
(b) 2.E.4.16.

But no such speciall effoine lyeth in an assise

(c) 21. H. 6. 42.

(d) 44. E. 3. 15.

(e) 27. H. 6. 1.

assise (c) of nonell disseisin, (d) doer, (e) assise of darrein presentment, and *Quare impedit*, for then the sixe moneths would passe and so the Church come in lapps, for such essoines must haue a yeare and a daies adiournment. But a Common essoyn lyeth in all those cases.

Statutes.

Westm. 2. cap. 11. In an appeale of the death of a man no essoyn shall lye for the Appellor, for whatsoeuer cause in whatsoever Court the appeale be.

Westm. 1. cap. 41. In assises and *livery* after that the tenant hath once appeared, he shall be no more essoyned.

Westm. 2. cap. 28. In like manner it shall be touching demandants in an assise.

Westm. 1. cap. 42. Parceners and Ioyntnants in a *præcipe* against them shall haue but one essoyn.

Glocest. cap. 10. So of a man and his wife impleaded in the Kings Courts.

9. E. 3. cap. 3. Stat. 1. In a writ of debt against executors, they nor any of them shall haue but one essoyn before apparance, that is to say, the summons or Attachment, nor but one after apparance.

Westm. 2. cap. 27. None allowed after the day giuen by *Præce partium*, in case where the parties consent to come without essoyn.

Marleb. cap. 13. After a man hath put him-

himselfe vpon an enquest, he shal haue but one assoine.

Westm. 2. cap. 27. After one hath put himselfe vpon an enquest, an essoyne shall be allowed him at the next day, but neuer after, whether he were essoyned before or not.

Mar. cap. 19. None shall need to sweare to warrant his essoine.

Westm. 1. cap. 43. The demaundant may auer against an essoyne (before Iustices) of being beyond sea, that the Tenaunt was within the foure seas the day that hee was sommoned, and three weekes after.

Westm. 2. cap. 17. In an essoyne *De male lesli*, the demaundant may auer by enquest that the Tenant is not sicke, nor in such plight but he may come before the Iustices. Such an essoine shall not lye in a Writ of right betweene two claiming by one descent.

5. E. 3. cap. 7. Essoyne of the Kings seruice, nor protection shall not bee allowed in writs of attaint.

12. E. 2. Stat. of essoines. See many particular cases where essoynes lye not.

CHAP. 42.

Of Continuance.

Continuance is from day to day till the end of the suite, else (a) if the Plaintiffe do nothing, it is called a discontinuance; if any errorr bee in the continuing

(a) 24. E. 3. 42.
11. H. 7. 5.

ning, as by awarding a *Capias* where a distress should bee, it is called a miscontinuance.

Statutes.

21. H. 3. *De anno Bissextili*. The day increasing in the leape yeare shall bee reckoned of the same moneth wherein it groweth, and that the day going before shall be accounted for one day.

51. H. 3. *Dies communes in Banco*. Dayes shall bee giuen in writs nine returnes, as comming in *Michalmas* terme, from *Ostab. Mich.* to *Ostab. Hillary*, &c.

51. H. 3. *Dies communes in Banco*, and 32. H. 8. cap. 21 Common dayes shall be giuen in reall actions nine returnes. In writs of dower v. returnes.

Marle. cap. 12. In dower *unde nihil habet*, foure or sixe dayes shall be giuen in the yeare.

In Affises of Darrein presentment and *Quare impedit*, from xv. to xv. dayes, or from 3. weekes to 3. weekes, as the place shall be neere or farre.

5 E 3 cap. 6. and 7. In an attainr v. dayes shall be giuen at the least.

The suite of an excommunicate person shall be put without day, terme paroll sans Iour till he be absolved And so is it in all other cases which happen without the Plaintiffs folly, as by the demise of the King,

King (so we call the death of the King, because in Law he neuer dieth, but leaueth his Crowne to another) *non venit*. of the Iustices, cessor of the eyer, protection, &c.

Statutes.

1. *E. 6. cap. 7.* By the death of the King no action, suit, bill, or plaint shall bee discontinued, or put without day. But the processe pleas, demurrers, continuances, shal stand good, and be prosecuted in such manner and forme as if the same King had liued. After continuance taken, the defendant may for once leaue his former plea, & plead any thing growing since this latter continuance, which wee call a plea *puis darrein continuance*. As if the defendant in an action of account plead receipt of parcell by the plaintife who wargeth his Law: now at the day which the plaintife hath to performe his law, the defendant may plead a release *puis dairein continuance*.

21. *E. 3. 49.*

Continuance is by processe, or vpon the Roll. That vpon the Roll is a *Dies datus*, or Empanlance. *Dies datus* when the Court giveth the parties day, and therfore in a personall action the defendant shall not bee condemned by default after such a continuance: for it is the act of the Court, and he doth not demand day as vpon an Empanlance, & this is alwaies befoze the Count.

21. *E. 4. 16.*

7. *H. 6. 39.*

41. *Br. defau. 34.*

Such a continuance by assent of both the parties is called a *Præce partium*.

18. *H. 8. 6.*

41. *E. 9. 1.*

Ff

So

Br. Contin. 14.

So as if the defendant come vpon the exigent by a *reddisse*, and be by mainprise, yet the plaintefe may haue day by *prece partium*, notwithstanding that thereby the defendant shall be let out of ward, for it is by assent of the parties.

22. N. 6. 12.

But in assises the continuance is by a *lufficiary nondum auisantur*, and not by a *Dies datus*.

7. H. 6. *ibid*

Emparlance is when the defendant demandeth day to see if he may end the matter without further suite, which he may do once, but not oftner without the plaintifes consent: and is alwayes after the Count. After which he cannot plead to the Jurisdiction, person, or in abatement either of the Count or writ. For (a) after emparlance a *Superjedeas* of priuiledge out of the Chancerie shall not be allowed: he cannot plead that the land is within the fene (b) ports or (c) antient demesne, &c. or that the Pl is a villein, or (d) outlawry in the Plaintife in debt vpon a simple contract, or in trespassse of batterie, or false imprisonment. (But in debt vpon an obligation he may, for that is to the action, inasmuch as the King is to haue the debt) or that the plaintife is an alien, viz to the person in an action of trespassse to his house broken downe, but to the action he may: Nor misnomer as no such Towne of D. where he is named L. S. of D. But where a *precipe quod reddat* is brought of the mannor of D. in D. there he may, for there it is in barre, or in an action of debt against

18. H. 8. 6.

(a) 22. H. 6. 7.

(d) 4. H. 6. 67.

16. E. 4. 4.

32. H. 6. 33.

13. H. 7. 17.

32. H. 6. 27.

against an Executor that he is an administrator and not an executor. But that he neuer was executor, neuer administred as executor he may, for that is to the action, not demand over of the obligation, or such like, but he may plead variance after, and so come to haue a view of the Obligation and Condition thereof, whereby to plead any matter in barre.

4 H. 7. 10.

But after a speciall emparlance, *Saluis omnibus aduantijs*, hee may plead to the Count or writ and haue over, but yet not in that case plead to the Iurisdiction or person.

4 H. 6. 67.

Br. Contin. 6.

In an appeale of Robberie, or such like, that toucheth life, if the defendant plead a plea whereby his life should come in jeopardy, the Plaintiff shall not emparle him to it, but must answer *Sedente curia*.

22 E. 4. 19.

Default after emparlance, that is, at the day giuen by the emparlance in peremptorie, and loseth the action in all actions whatsoever, real or personal, for it is a departure in despite of the Court. As in debt, trespassse, or such like, the Plaintiff in this case shall recouer his damages in a *precipe quod reddat*, if the Tenant appeare and emparle, and after make default, seisin of the land shall be awarded, and not a *petit cape*. In a writ of right if the tenant vouch, and the vouchere enter into the warrantie and emparle, and after make default, the demandant shall recouer seisin of the land against the Tenant,

38 H. 6. 33.

1 H. 7. 11.

Br. de fau. 34.

39 H. 6. 16.

38 H. 6. 33.

tenant, and the tenant over in value against
the vouchice.

CHAP. 43.

Of Mesne, Iudiciall processe.

Iudiciall Processe is a Processe out of
that Court where the original is return-
ed, prosecuting the action. And there-
fore vpon an original returned *vide*, an
alias and *pluries* shall go out of the same
Court *Teste* the chiefe Iustice, for by the re-
turne the Court is possessed. But if no re-
turne at all bee made, the *alias* and *pluries*
shall go out of the Chancerie, *Teste Regem*.
This must be sealed with a seale Iudiciall,
being in the custodie of the chiefe Iustice of
that Court.

Iudiciall processe are mesne processe of
in nature of new originals.

Mesne processe which is for any necess-
arie act to be done, not onely for the plain-
tiffe against the defendant, but for either of
them against any other, whose presence in
the Court may be necessarie for them. As a-
gainst one that is vouched or praied in aide
of. So against Iuries, witnesses, &c. So to ex-
ecute iudgements giuen, or any thing else
necessarie for the triall of any of their alle-
gations.

Vpon a fine letted before it be engrossed
the *woztes* to compell atturment are per
que

23. E. 4. Dy.

1. H. 6. 4.

OWN B. 171.

que seruicia, when the fine is leuied of a feignorie.

Old N.B. 170.

Quem redditum reddit, when it is of a rent charge or rent secke.

Old N.B. 170.

Quid iuris clamat, when it is of a remainder or reuerſion.

Old N.B. 168.

Statutes.

23. **Eliz. cap. 3.** The entrie of record of an Atturment vpon a fine ſhal be utterly void; except the partie (mentioned to atturme) firſt haue appeared in Court in perſon, or by atturmy warranted by the hand of one of the Juſtices of one Bench or other, or of one Juſtice of aſſiſe, vpon a writ of *Quid iuris clamat, quem redditum reddit*, or *per que ſeruicia*, as the caſe requireth.

In petitions whether in Parliament or elſewhere, and though the king haue granted the lands ouer, or whereſoeuer the king being made partie, may be at loſſe: as when he is prayed in aide of, in a *præcipe quod reddat*, or other real action againſt his leſſee, but not in (b) treſpaſſe (c) *Eiectione firme*, or other (d) perſonall action, for there he is to loſe nothing. **A writ of ſearch** lyeth, which is to ſearch in the Treſury before the plea proceed, if by likelihood ſome matter may be here to maintaine his title. As vpon finding by office that A. died ſeiſed (of certain land holden of the King) without heire, and a trauerſe put in that A. held not of the king. But if one come and ſay that A. had iſſue B. who enfeoffed him, there no

Stam. pr. 73.

(b) 27. H. 8. 28.

(c) 15. Dy. 320.

(d) 27. H. 8. ibid.

search shall be, for no matter can be in the tresorie to proue whether A. had issue, no more if the kings title be by an alienation in mortmain.

Statutes.

14. E. 3. cap. 14. In a petition and search granted after foure writs, whether any imminent or remembrance bee found for the King, or nor, the partie shall be put to answer. So as euery of the foure writs be delivered to the Tresorer and Chamberleins xl. dayes before the day of the returne.

In reall *praecipies* where a freehold is to be recovered vpon default, after plea issue or demurrer a *petit Cape* shall goe forth in the nature of a grand Cape in all things, save that here the tenant is to answer to the default onely, not to the demand also, as in a grand Cape. And therefore it is called a *petit Cape*, and the other a grand Cape, because there is lesse in the one then in the other.

So vpon a voucher a *petit cape ad valentiam*. In those that are for other hereditaments, not in point of seigniorie, as (a) annuitie, (b) *Quare impedit*, *Quo iure*, (d) *quod permittat*, &c. vpon default as before, a *distresse* shall goe forth in lieu of a *petit Cape*. And both there, and vpon view granted, day shall be giuen as in a plea of land, for it is in the nature of a *praecipue quod reddat*, in as much as hereby he is to recover the land it selfe.

The Procelle against Jurors is first

38. H. 6. 33.

3. E. 4. 4. for the
Demurrer

38. H. 6. *ibid.*

Old N. B. 179.

(a) 2. H. 4.

(b) 21. H. 4. 1.

(c) Old N. B. 71.

(d) 30. H. 6. 8.

30. H. 6. *ibid.*

a Venire facias to the Sheriffe to returne them, at which day if they appeare not, then a *habeas corpora*. OLD N. Br. 171.

And after that a distresse infinite.

Statutes.

27. Eliz. cap. 7. No Iuror shall bee returned without the true addition of the place of his dwelling at the time of the returne, or a yeare before, or some other addition whereby hee might bee knowne, nor no estreet shall be without such addition as is in the returne.

25. H. 8. cap. 6. In every *Habeas corpora* or *distringas* with a *Nisi prius* at the first writ, v. s. at the least shall bee returned in issues vpon euery Iuror, at the second, x. s. at the least, at the third xiiij. s. iiij. d. and euer afterwards the double of xiiij. s. iiij. d.

2. E. 6. cap. 32. If the principall Iurie appeare not fully at the *nisi prius*, those that make default, shall forfeit their issues, though the Iurie be made vp *de circumstantibus*.

Where in personall actions vpon the defendants default, the Iurie shall be taken, which wee call taking of the Iurie by default: In an action of trespassse attornies

(a) whatsoever the issue be, (b) release, (c) Justification, &c. So in (d) debt, detinue, account, & the rest which are for things in

¶ 4

certain

(a) Br. default 58.

(b) 34. H. 6. 24.

2. H. 4.

Br. eng. de don. 11.

(c) 9. H. 5. 15.

(d) 5. E. 4. 6.

1. H. 7. 1.

(e) 1. H. 7. 1.

(f) 9. H. 5. 13.

42. E. 3. 1.

The forme of all
these writs.

(b) Old N. B. 106.
in an assise of nouell
disseisin, and 25. in
darreus presentment.

(i) F. N. B. 196. g

(k) F. N. B. 50. k.

taintie if the issue be taken vpon a matter
en fait onely, as (e) payment, or that an (f)
acquittance pleaded in barre by the defen-
dant, was made by *dures*. But if it be vpon
the acquittance it selfe, release or other mat-
ter in writing, the plaintife may there
pray iudgement if he will. But if he do not
pray it, the Iurie shall be taken by default,
as in an action of trespassse.

But in assises of nouell disseisin, nu-
sance, mortdancestres, darrein presentment,
and *Iuris utrum*, the original writ comman-
deth a Iurie, as well as the defendants, to
be warned, which Sōmons to the Iurie, ser-
ueth in stead of a *venire facias*. So that the
processe here against the Iurie is, *Somon' ha-
beas corpora & Distringas*.

And therefore there vpon default after
that originall processe ended, viz. the A-
tachment in an assise of nouell disseisin and
nulance, the sommons and resommons in a
(i) mortdancestor, darrein presentment, and
(k) *Iuris utrum*, the enquest shall bee taken
by default, whether the default be present-
ly after the resummons or after effoine, or
plea pleaded. As it should bee taken if the
Tenant did appeare.

CHAP.

CHAP. 44.

*Of Iudiciall processe in the nature
of new Originals.*

Iudiciall processe in the nature of new
originals (in none of which any free-
hold shall ever be recovered) but dama-
ges onely, are these that follow. First
such as command to doe some thing

17.E.3.76.

As,

1. Resommons or Reattachment, accor-
ding as a Sommons or attachment lay in
the first action, to receive in the former
plight a suite put without day. And may
either revive the originall alone, or the
whole proceeding by special words, in that
Resommons or attachment, as if it be a-
gainst the tenant after a voucher, the vou-
cher is not received, vlesse special mention
be of the vouchce also, nor any plea at all is
reviued but the originall onely. But in e-
very Resommons after an issue, the issue is
reviued, for day is given to the Iurors ex-
pressly; So is all the pleading by a speciall re-
sommons. But no such resommons nor re-
attachment shal be vpon a discontinuance,
though it be in a writ of ward, where a re-
sommons is given by the Statute, for vpon
a discontinuance the originall is deter-
mined.

5.H.7.40.

24.E.3.48.
Br.resom.33.

F.N.B.14.

2. All certificatorie writs, as if in a writ of right close brought in antient demesne the tenant vouch a foreyner to warrantie, and after purchase a *Warrantia chartæ* returnable in the Common place against the vouchee, and thereupon a *superfideam* to the Baylife in antient demesne. Now if the plea of *Warrantia chartæ* bee determined or discontinued in the Common place, the demaundant in the writ of right close may sue a writ out of the Chancerie, directed to the Iustices of the Common place, to certifie the King in his Chancerie of it. To the end that if it bee so, the Baylife in antient demesne may proceed. So vpon a *Monstraverunt* sued against the Lord in antient demesne, and an attachment thereupon, because he shall not bee driuen to answer to the attachment till the Court be aserteyned whether the lands be antient demesne, or no: the Plaintifes in the *Monstraverunt* must sue a speciall Writ to the Tresurer, and Chamberlayns of the Exchequer to certifie it. In like sort vpon an *Indicavit* purchased, because the tythes amount to the fourth part of the value of the Church, the other may haue the Kings Writ directed to the Bishop to certifie the King in the Chancery of the value of the Church, to the end that if it amount not to that value, he may haue a Consultation. So vpon surmise made in the Chancerie, that the Kings Comitee of ward hath done wast, a writ shall go forth to the Escheton to certifie the King thereof.

F.N.B.16.

F.N.B.52.

F.N.B.59.

and so in all other like cases.

3. *Cerciorare* to remove a record out of Court of record into the Chancerie, for 36.H.8.Br. Cap. 30.

record shall be removed into the Common place, nor no enditement taken in the Countrey into the Kings Bench immediatly any *Cerciorare*, but first it must be certified into the Chancerie by a surmise, and from thence sent into the Common place, Kings Bench, as the case is, by a *Mittimus*.

12.E.4.11.

4. And every writ of error is a *Cerciorare* in selfe.

5. To remove suits out of Court Bascil, for a *Recordare*, *Pone*, or such like, are

3.H.6.3.

no other entent but onely to remove somewhat into the Kings Court, and are in the nature of a *Cerciorare*. And vpon the removal the *recordare* or *pone* is determined, for the plea shall not be holden vpon them, but on the plaint that is removed, and the pledges shall stand. And these may be without shewing any cause in the writ, if removed be at the Plaintifes suite: but without shewing good cause in the writ if it be at the Defendants suite. As

Fit. N.B.4b.

to remove a plea in a writ of right to shew that the Baylife is heire to the land, or to shew vpon him to maintaine the matter where he hath part of the land, or that the Tenant hath alledged bastardy, or pleaded a false plea, or ioyned the issue vpon the defendant, and assise, &c. being to remove a plea in a writ of assise by plaint, to shew that the defendant auoweth for damage feasant, and the

Fit. N.B.70b.

the Plaintife iustifieth by reason of Comon of pasture, which is a plea touching freehold, and therefore should not be without writ.

These are either to remooue pleas by writ, or by plaint without writ. Of the first sort are a Tolt and Pone.

Tolt or Toltas is for the plaintife, but heuer for the Tenant, to remooue a writ of right out of the Lords Court into the Countie Court. And because this being the plaintifes suite may bee without cause, therefore this clause is put in every writ of right patent, *Et nisi feceris vice com faciat. Pone* is to remooue into the Countie place in all other cases, viz. (b) save only in the case of a writ of right to be remooued out of the Lords Court into the Countie Court. As (c) writs of right remooued into the Countie Court by a Tolt, (d) *Iusticiarii Vicontiel* writs in the Countie Court, repleuins by Writ either (e) there or (f) in any other Court Baron. And all this indifferently, (g) either at the plaintifes or at the defendants suite. So vpon a (h) *Natus habens* sued in the County, if the defendant allegeth himselfe franke, the Lord is driuen to remooue it by a pone. But a pone to remooue repleuin by writ out of any other Court Baron then the Countie Court cannot be without shewing cause, though it be at the plaintifes suite.

Of the second sort are a *Recordare*, and *Accedas ad Curiam*. In both which nothing

Old N.B. 2.
Fir. N.B. 4. a.

Old N.B. Ibid.

(b) F.N.B. 4. b. c.
(c) F.N.B. ibid.
(d) F.N.B. 125. f.
In admeas. of pasture.
(e) F.N.B. 69. m.
(f) F.N.B. 70. a.
(g) F.N.B. 69. m.
& 70. a. in arepleu. & 125. f. in
Admeas. of pasture.
Old N.B. 2. in a
writ of right.
(h) F.N.B. 77. a.

3. H. 6. 30.

the plaint shall be removed, (a) though they be at issue. (a) F.N.B. 112.

Recordare (b) is to remoone plaints in Countie Courts. Every (c) Writ of false judgement vpon a judgement given in the Countie Court is a *Recordare* in it selfe. (b) F.N.B. 70.6. (c) F.N.B. 18.4.6

Accedas ad curia, is to remove plaints in any other Court Baron (c) Every Writ of false judgement vpon a judgement given in any other Court Baron then the County Court, is an *Accedas ad curiam* in it selfe. F.N.B. 70.6. & 18.4. (c) F.N.B. 18.4.

This also vpon good cause shewed in the writ, lyeth for the tenant to remove the writ of right out of the Lords Court immediately into the Common Pleas. F.N.B. 70.4.

5. **Mittimus** to send a Record out of the Chancery, whether being certified thither before by a *Certiorare*, or howsoever else being there, into another Court of Record, to the end they may proceed vpon it. But the Chancellour may send such a Record by his owne hands, without any *Mittimus*, if he please him. F.N.B. 332.

6. **Procedendo** to proceed in suits. As if the Lord vpon a writ of right sued in his Court wil not hold his Court, the demandant may haue this writ vnto him, if a man use himselfe to be essoyned of the Kings service in any action where indeed he is not in his service, the Plaintife or demandant may haue this writ directed to the Iustices commanding them to proceed. So where the Iustices in any Court delay the Pl or the F.N.B. 34. F.N.B. 174. F.N.B. 34. 3.

the defendant, and will not give iudgement for him where they ought to do it, the partie grieved shall haue a *procedendo ad iudicium*.

Old N. B. 32.

Of this nature is a writ of consultation to proceed in the spirituall Court; where one suing there for matters belonging to that Court, as for matters testamentarie, concerning matrimonie, &c. is by a prohibition restrained to prosecute the suit.

Statutes.

24. E. 1. De consultatione. A Consultation to be awarded by the Chancellour or chiefe Iustice of the King, vpon sight of the libell at the instance of the Plaintife.

50. E. 3. cap. 4. Vpon a consultation once duly granted, the Ecclesiastical Iudge may proceed in the same cause notwithstanding any other prohibition. So the matter of the libell be not enlarged, nor otherwise charged.

F. N. B. 2498.

7. A writ of mainprise to set at liberty one battisable finding baile, that is to say, sufficient persons to bee bound for him as suretie to answer the action, which in respect of deliuering him into the hands of his frendes the sureties, is called Baile, in respect of their taking of him is called mainprise.

4. E. 6. Pl. 67.

Such persons battisable bee they which are taken vpon a *Capias* original.

But not the defendant in (a) *Appeale of Mayme*, if the *Mayme* bee *haynons*: nor the *principall* in an *enditement*, or *appeale of Felonie*, (c) nor the *accessarie* after *attainder* of the *principall*, (d) nor any in *high treason*, where all be *principals*.

(a) 6. H. 7. l. c.
(b) *West 1. ca. 15.*
Stamf. 71. & 72
In case of the death
of a man.
(c) *Stamf. ibid.*
(d) *Div. of courts*
fol.

Statutes.

Westm. 1. Cap. 15. Such as are accused of receipt of felons of commandement, or force, or of aid in felonie done, and a man appealed by a prouer, after the death of the prouer (if he be no common theefe, or defamed) shall be let out of prison by a surety.

Recaptio is for him whose goods being distreyned before for rent or services, but not for damage sefaunt: for there as oft as they are so found vpon ones land, it is lawfull to distreyne them. For eury time is a new wrong, and a new trespassse; are distreyned againe for the same thing, hanging the ples in the Countie Court, or before the justices. Though the first distresse were lawfull, and though the rent or service were behind againe, or not: for by the first distresse he shall haue a Returne til he be satisfied of all. And here the goods distreyned, must be the same parties goods. For if the Lord first distreyned his tenant, and after the beasts of a straager, no Recaption lyeth. But vpon a distresse of two mens beasts first, and after of the beasts of one,

F. N. B. 71. c.
Fin. ibid.

Fin. ib. 72. g.
Fin. ib. 72. c. & 71. g.

Fin. ib. 71. b.
Fin. ib. 71. i.

Fit. 71. e.

En. 71. 7.

Fit. 72. d.

Fit. 73. e.

one, it lieth for that one: so vpon a distresse of beasts which a man hath in common with another, and after of such beasts as are his owne alone. Also he that raketh the second distresse must bee the same partie that distrained first: as if the Lord distrained first, and then his seruant or Bailife distreinethe againe by his commandement, or without his commandement; if he agree afterwards to it, as by ioining with his seruant or Bailif when they pray in aid of him. Otherwise not, though the Bailife make conisance in his right: for it may be he hath no notice of it, and the partie hath remedie against the bailly by an action of Trespasse. But this writ lieth not after *Non suits* in the repleuin; because there the plea is not hanging: but before auowrie in the Repleuin it doth, for the plaintiff in the recaption may well count that the defendant tooke them for the same cause: And that may make a good issue, which the inquest may take notice of wel enough by the euidence of the parties. But vpon a Repleuin sued by plaint or writ in a Franchise, and not before the sherif or the kings Iustices, no recaption lieth, though he bee distrayned by the same partie againe, and for the same cause, for the King will not direct this writ but to the Sherife. But if the suit be remoued before the Iustices by a *Pone* or *Recordare*, there a Recaption lieth as well for a distresse before the *Pone* or *Recordare*, as afterwards. And here the plaintiff

nise shall recouer dammages for the second taking onely, because it is a contempt against Law, for which the defendant shall be fined if he be convicted before the justices, or amereed, if the conviction be before the sherife, but shall recouer no dammages for the taking nor the detaining of the beasts. And therefore here the defendant shall not make auowrie, as he should in a Repleuin, but onely may iustifie the taking, as in an action of Trespasse.

9 *A Writ De magna assisa eligenda to the* sherife, to summon foure knights to chuse the grand Assise, when the mise is toynd thereupon in a writ of Right.

Pl. N. B. 4. f.

And this is a meere iudiciall writ issuing out of the Common place when the plea hangeth there. But when the plea is in the Lords Court, or in the County Court, then it is an originall writ out of the chancery.

10 *A Certificate De Assise* vpon a verdict given in an assise that is no perfect, whether not well examined by the Iustices, or not fully inquired of by the Iurie, to bring in the same Jurors to give a more perfect one. And this must be sued in the same countie where the assise was sued, and may bee as well before other justices, as those that took the assise: if the kings Bench, or common place be in the countie where the Assise passed, the this writ may be sued there.

7. E. 6. T. 13.

F. N. B. 13. f.

G g

And

In. *ibid.* d.F.N.B. 77. e.
2. El. Dj. 173.2. El. ib.
(a) 1. E. 4. 9.
(b) 2. El. ib.F.N.B. 163. d.
Old N.B. 30.
Old N.B. 28.

(a) Old N.B. 30.

(b) 22. E. 4. m. 2

And beside the writ it selfe directed to the sherife, the Iustices must haue a patent made vnto them as in the assise it selfe.

1. *Proprietate Probanda* vnto the Sherife to inquire whether the property bee to the plaintiff or defendant, when upon a Replevin sued, the defendant claimeth property, which determineth the sherifes power to make Replevin.

And this also may be meere iudiciall life, being out of the Kings bench (a) or common place, (b) and returnable there.

Secondly hither belong those that be prohibitozie, or restraine from doing something where the prohibition it selfe is in lieu of a Summons. And after that, the proces is an attachment and distresse. So in euery writ which is vpon a prohibition broken, as a *quare non admittit*, *quare incumbravit*: for euery breach of a prohibitiō is a contempt in it selfe.

Of this sort are

1. Prohibitions to restraine the party from suing in an inferior court, that ought not to hold plea of it: as in the spiritual court, for (a) any plea that concerneth not matrimonie & wills, as for goods or debts, &c. and (b) though it be of matters for which the plaintiffs haue no remedy by the common Law, as of a couenant broken without specialtie, or debt, &c. against executors vpon a simple Contract made by their Testatour. Or *Pro lesione fidei* against one which hath waged his law

is

in an action of debt vpon a simple contract and sworne falsely. So if the Baylife in a Court baron hold plea of matter aboue xl s. the defendant may haue a prohibition. And these prohibitions may be directed to the Iudge himself, not to hold plea in those cases, as well as to the Sherife, to restraine the partie from suing.

19. H. 6.
Old N. B. 31.
F. N. B. 76.

Such a prohibition is an *Indicauit* for the Defendants patron when the right of auowson of any part of ones tythes is in demand in the spirituall Court, betweene two Clarkes claiming from seuerall patrons. So as the *Indicauit* is alwayes betweene foure persons, whereof two are patrons, and the other two Clarkes. One claiming to hold of the auowson of one patron, the other of the other patron, for an auowson being a lay hereditament, wherefoer the patronage should come in question the Common Law is to decide it; But where that is not to come in question, the spiritual court shal decide it, by suit in that Court called spoliation. As a person accepting another benefice, or created a Bishop, and hauing a dispensation to keepe his personage, shall haue a spoliation in Court Christian against another *Incumbent* presented by the patron, and then shall come in debate whether they haue pluralitie or dispensation, or no.

12. E. 4. 12.

Fit. N. B. 36.

And this *Indicauit* lyeth though it bee but the right of the twentieth or thirtieth part of tythes that is in demand, for at the

38. H. 6. 20.

Common Law the Court Christian had no power to hold plea of any part of dismes, but a prohibition lay till the Statute of *westm. 2. cap. 5.* which will haue an *Indicauit* to be of tythes to the value of the fourth part of the Church at the least. But before that, it might haue beene of the xx. part, and the patron thereupon might had a writ of right, wherupon at the Common law there was a writ of the auowson of the tythes of v. acres or x. acres, or one acre. But now since by the same Statute an *Indicauit* shall not be granted of lesse then the fourth part, therefore there is a writ of the auowson of the tythes of the fourth or third part. But at the Common Law there was no such writ.

Statutes.

westm. 2. cap. 5. When the Parson of any Church is disturbed to demand tythes in the next parish by a writ of *Indicauit*, the patron of the parson so disturbed shall haue a writ to demand the auowson of those tythes. And after the plea deraigned in the Kings Court, then it shall proceed in the Court Christian.

18. *E. 3. cap. 7. pro clero & cap. 47.* Writs of *Scire facias* to answer of dismes in the Chancerie, and to shew why such dismes ought not to be restored the demandants shall not from henceforth be granted. Sa. uing the Kings right as hee and his ance.
Ror

flors were wont to haue

2. *3 Sup' s'ideas to stay any further proceeding in the suite.* As if a writ of trespassse *vi & armis* be brought in a Court Baron, if vpon a writ of right close brought in antient demesne, the demaundant and tenant put themselues vpon the grand assise, or the Tenant vouch a forreyner, or plea a forrein plea which cannot be tried there, if a Clark of the Chancerie or any of the seruants of the Chancellor, or Lord keeper of the great seale bee sued in any other place for a trespassse, or other matter.

*F.N.B. 239.d.
F.N.Br. 13.g.*

F.N.B. 400

Of this nature are, a writ of peace for the Tenant vpon a writ of right brought in the Lords Court, vouching one to warrantie out of the power of that Court, we call it a forreine voucher, or ioyning the mise vpon the grand assise to haue the matter respited till the Iustices in Eyre come thither. which if he bring not at the next Court day, after such voucher or mise ioyned, he loseth his tenauncie, the reason is, because the Lord cannot make a grand assise to come. But if battaile be ioyned, that shall be determined there, and after such a writ brought the plea may proceed by leaue of the Iustices. As if the vouchee come before them and enter into warrantie, they may award that he shall go to the Court of the Lord and there warrant to the partie that vouched him, and assigne a day certaine of the Court, and also giue leaue and power to the Lord to hold his Court.

*13.E.3 vouch 269
c.E.1. droit 45.*

c.E.1. ibid. 1

c.E.1. ibid.

13.E.3. ibid.

F.N.B. 77.f.

OLD N.B. 46.

De libertate probanda for the Defendant
 upon a *Natus habendo* sued in the County,
 claiming to be franke to the Sherife to ad-
 iourne the plea before the Justices in Eyre.
 And therefore must be brought before any
pone deliuered by the Lord to the Sherife to
 remouet it. And this is a *Superseas* to the
 Lord not to proceed til the day of adiourn-
 ment, nor to cease the villein till the plea dis-
 cussed.

Statutes.

25 E. 3. cap. 18. The Lord may seise the
 bodie of his villein, notwithstanding that
 a Writ *De libertate probanda* be hanging.

F.N.B. 267.e.

Idemptitate nominis for one molested by a
 suite against another of the same name. As
 if he be taken by a *Capias* or *Exigent* awar-
 ded against the other, or distreined by pro-
 cesse out of the Exchequer. And this Writ
 shall be either to the Escheator or Sherife
 according as he is vexed, or his goods taken
 by either of them, to surcease against him,
 or against his goods.

F.N.B. 28.g.

39.H. 6. 38.

3. Protections *cum clausula volumus* when
 the King in respect of the Defendant being
 in his service taketh him, for the plaintife
 can neuer haue a protection for him, va-
 lesse it be in speciall causes where the plain-
 tife doth become defendant, into his prote-
 ction for one yeare to bee free from all
 suits.

writs

Writts of *habeas corpus*, *Quare impedit*, *assises* of newell disseisin, and pleas before the Justices in Eyre are accepted. Therefore it shall for that time save all defaulters. So as upon a protection (cast in a plea personell) at the *Nisi prius*, and repealed at the day in Banke, yet the enquest shall not be taken by default, for the default was once faued. Otherwise it is of a protection disallowed at the day in Banke. And a man may excuse his default at a *Grand cape*, or *petit cape* by casting of a protection. But a protection can indure no longer then for one yeare, for otherwise it might bee for xx. xxx. or C. yeares, and by the same reason for a thousand yeares, which were a great inconuenience and disherison to the partie. But a protection for one yeare is not so, for after the yeare ended he may haue a resommons and proceed in his suite: yet the King after the first yeare ended may take him againe into his protection for another yeare, though it be space of ten or twentie yeares together, for in that case appeareth at the first no mischiefe nor inconuenience, as there doth when he taketh him into his protection for so many yeares at once.

Old N. B. 21.

39. H. 6. ibid.

31. H. 6. 10.

Fitz N. B. 296.

39 H. 6. ibid.

Statutes.

5. E. 3. cap. 7. No protection shall be allowed in writs of Attaint.

This kind of protection is denide. *Prosecutio quia profecturus*, when he is to goe beyond

39. H. 6. 38.

Eg 4

pond

F.N.B. 289.

F.N.B. 282.
39.H.6.39.

pond sea in the Kings businesse.

Protectio quia moratur, when he stayeth there about it. Of which nature is also a protection *quia in prisona*, when being sent beyond Sea in the Kings warres hee is there taken and detained in prison. The going or staying about the Kings businesse in the marches of Scotland, or such like places is counted as beyond Sea. But a protection *quia moratur super altum mare*, is not good, for it cannot bee entended that hee doth abide there.

Statutes.

13.Ric.2.cap.6. A protection in respect of going beyond Sea disallowed (except it be in voyage Royall, or businesse of the Realme) where it beareth date after the suit commenced. And the Lord Chancellour hath authoritie to repeale it, if he go not in conuenient time, when he returneth.

A Statute of protection, 33.E.1. Auerment is giuen against petition for the kings seruice.

1.Ric.2.cap.8. Protection (*volumus*) not allowable for victuall taken or brought vpon the voyage or seruice, whereof the protection maketh mention, nor in trespasses and other contracts made after the date of the same protection.

Prerogative.

Prerogative.

The King may take his creditor into his protection, that no other creditor shall sue or arrest him, till the King bee satisfied, which is also a protection *cum clausa voluntatis*. F.N.B. 186.

Statutes.

25.E.3.cap 19. A Creditor shall haue an action and iudgement against the kings debtor, notwithstanding such a protection. But not execution, vnlesse he take vpon him to pay the king, & then he shall haue iudgement and execution of both debts, as well of that due to the King as to himselfe.

He may also by a writt called *Warrantia diei*, rehearsing that one which should appeare in proper person, whether it bee the plaintife or defendand, is in his seruice, wil that for one day no default be recozded vpon him. So as if the tenant in a *praecipe quod reddat* make default at the grand Cape, or petit Cape: yet before Iudgement vpon that default, the King by his writt may make that it shal not hurt him. And this standeth with reason, because euery man is bound to serue the King in his affaires. Neither is it material whether he be in the Kings seruice or not, when the King certifieth that he is: for it seemeth by the words of the writt, that the King by his prerogatiue may for one day warrant his default. And this writt cannot be granted but by the king himselfe. F.N.B. 17.

The fourth Booke

4. *Essoyne de malo lesli*, is a writ to warrant an essoyn of lying sicke a bed cast by the Tenant in a writ of right: Commanding foure Knights to see him, and if he be sicke to giue him day at the end of the year, and the day for so long adiournment is in that essoine.

Statutes.

Westm 2. cap. 17. In an *Essoine De malo lesli* the demaundant may auerre by enquest, that the Tenant is not sicke, nor in such plight but that hee may come before the Iustices. Such an essoine shall not lye in a writ of right betweene two claiming by one descent.

F.N.B. 37.f.

5. *Ne admittas* for either partie, plaintife or defendant, in a *quare impedit*, or assise of darrein presentment to the ordinarie, not to admit the others Clarke till the matter be discussed.

F.N.B. *ibid.*

And this must be sued within 6. moneths and not after, for after the sixe monethes it is lawfull for the ordinarie to present by laps, but being sued within the six moneths the ordinarie may neither himselfe (b) collate within six moneths (but afterwards by laps he may) nor (c) admit the others Clark at any time, (d) though it be after the sixe moneths, and though it be found for him by a *lure patronatus*, which is a commission that the ordinarie may grant to enquire who is the right patron.

(b) F.N.B. 48.l.

(c) *Fis. ibid.*

(d) F.N.B. 48.l.

6. *Quare incumbrauit* for him that saith *Ne admittas*, and after recovereth in a *Quare impedit*, or assise of darrein presentment, though it be after the sixe monethes, but before recoverie no *quare incumbrauit* lyeth against the ordinarie for incombryng the Church, contrarie to the *ne admittas*. But of a collation or admittance before a *ne admittas* sued, no *quare incumbrauit* (but onely a *quare impedit*) lyeth, for the ordinarie can haue no notice till the *ne admittas*.

F. N. B. 48. c.

F. N. B. 48. b.

But no *ne admittas*, nor *quare incumbrauit* lieth in a writ of right of auowson, though the Church become void hanging the writ, and the Bishop do encomber it, for the demandant there shall not recouer the presentment but the auowson. And if he haue title to present, hee may present, and vpon disturbance haue a *quare impedit*.

F. N. B. 48. 7.

CHAP. 45.

Of Iudgements.

THUS farre of Suit. Iudgement is the Courtes finall determination of that suit.

Upon Iudgement against the King in a petition, hee is presently out of possession. And therefore euery Iudgement is in it selfe a *moueas manu*, or an ouster lemaine. In a writ of right the Iudgement after issue toynd is finall on either side, not

10. El. Dy. 26. 2.
The writ of false
Iudgement shall be?
Recordare fac. lo-
quelā qua fuit in ea-
dem curia and not
qua off. for by the
iudgement loquela
is determined.
10. E. 3. Stam.
par. 78.

(c) F.N.B.6.
 3.E.1.Dy.301.
 (d) F.N.B.6.
 (e) 26.H.8.8.
 F.N.B.31.d.

not onely when it passeth by verdict, or vanquishing of the others Champion, but where the demandant is (c) *non suit*, or the (d) Tenant maketh default, or the (e) vouchee after such an issue ioyned by him, departeth in despite of the Court, &c.

Prerogative.

Against the King Judgement is not small, but is alwayes with a *Saluo iure Regi*.

5.E.3.50.

Recoveries in a writ of right bind all strangers not claiming within the year. As being suffered by a disseisor, it bindeth the disseisee by his non clayme. Tenant for life suffering a wrongfull recoverie, it shall prejudice his right that hath the inheritance, though he be prayed in aid and make default. for no aide prayer is there necessarie, in as much as the other being tenant of the freehold, a recoverie is good against him. But that after the death of Tenant for life, hee may falsifie it by action of *Ad terminum qui preterijt*, or writ of right which we call falsifying of recoveries. But he cannot enter, (a) neither can lessee for yeares at the Common Law falsifie for hauing but a Chattell deriued out of a freehold, there is no reason hee should falsifie a recoverie which draweth the fee simple out of the lessor. Also the present estate vpon which the lease depends being destroyed, the lease must needs be extinct.

34.H.6.2.
 4.H.7.3.

24.H.8.
 Br. fau. reco. 41.

(d) 26.H.8.2.

Statutes.

Statutes.

14. *Eliz. cap. 8.* Euerie fraudulent reco-
uerie against any Tenant for life, or where-
upon any tenant for life, or hee that hath
right to estate for life is vouched, shall bee
void against him in the reuersion, or in the
remainder, vnlesse it be by his owne assent
appearing by record.

21. *H. 8. cap. 15.* Termors for yeares or in
by execution of Statute staple, Statute Mar-
chant, or *Elegit*, may falsifie recoveries on-
ly for their owne Terme in such sort as Te-
nants of the freehold, neither partie nor pri-
ue to the recouerie might at the Common
Law.

In a writ of dower by gardein in soccage against gardein by knight seruice, she
shall at his prayer bee adindged to endow
her selfe wholly of the land in soccage. And
this is called *Dower de la plus beale*. But such
dower shall not bee where the woman is
gardein *en fait* by knight seruice, nor where
all the husbands lands were holden in soc-
cage, and shee brings her writ of dower a-
gainst the heire: nor where she brings it a-
gainst her husbands feoffee with warranty,
for he may vouch the heire.

A debt acknowledged in Court of Re-
cord either to the King or to a Common, is
in the nature of a Judgement, and called a
Recog-

(a) 18. E. 4. 13.
 (b) 7. El. Dy. 232.
 18. E. 3. 5.

(c) 41. E. 3. *tres.*
 199
 (d) 40. E. 3. 42.

(e) 1. Mar. Pl. 99.
 3. H. 7. 12.
 4. E. 6. Br. Cor. 185
 (f) 21. H. 7. 31.
 (g) 3. H. 7. 12.
 (h) 12. E. 3. Cor.
 378.

(i) 3. Mar. Dy. 120

Stam. 133.

Recognisance. And therefore such a matter acknowledged by an infant, cannot be avoided but during his nonage onely. As a (a) fine by writ of error, a (b) Recognisance, Statute, or such like, by an *Audita querela*: for it shall be tried by inspection of the Court, whether hee were within age, or no.

In appeales of (c) maymes, enditements or appeales of (d) felonie, the accessorie shall not be compelled to answer till attinder of (e) all the principals, by verdict, outlawrie, or though it be by taking him to his Clergie, or abituration. So as if the principall die (f) or haue his (g) pardon before, or if two men be endited, one as principall, the other as accessarie, and the principall bee afterwards attainted of another felonie and hanged: the accessarie shall be discharged. And (i) if one of the principals bee not attainted, the Accessarie shall not recover damages against the Abettor, for he is not *legitimo modo acquietatus*. But in case of high Treason all offenders are accounted principals, and there is no accessarie at all.

He that is or by possibilitie may be within orders, for one being within orders (if he shew them, or the ordinarie certifie so much) shall haue his Clergie, whether he can reade or no. Otherwise he must be able to reade a verse, namelie, a Deacon at the least, may haue the benefit of his Clergie, saue him either from Iudgement when the Clergie is prayed before, or from execution

if it be prayed after, if he be found culpable
 by verdict, or his owne (k) confession either (k) *Stam. 138. d.*
 before the Coroner, or the Iustices of any
 barre, felony, where life or member is to be
 lost, be it vpon an enditement or appeal,
 but (l) not for killing a man by misfortune,
 or *se defendendo*, nor yet for petie Larceny, (l) *Stam. 124.*
 for in these cases he is not to haue Iudge-
 ment of life or member. No more in case of
 high Treason, or petie Treason. And such a
 (m) Clarke might indeed by the antient (m) *Stam. 130. d.*
 Law haue had his Clergie before hee were
 endited. But now he shall not haue it vpon
 his arraignment, vnlesse he plead to the fe-
 lonie and be found guiltie: for otherwise he
 should lose his goods by an enquest of of-
 fice, to which he could haue no challenge
 as he may haue to this. But yet hee may
 waiae this benefit and pray his booke after
 the enquest, and before their comming
 backe. In which case notwithstanding, the
 verdict afterwards shall be taken. And that
 is in *fauorem vite*: because if the Iurie find
 him not guiltie, he shall be charged. And
 this possibilitie (there beeing no other im-
 pediment) as if it be a woman, a blind, or a
 maymed man, shall be tried by the Judges.
 And therefore if the ordenarie challenge
 him, where he readeth not as a Clarke, he
 shall be fined and the partie changed. Or if
 hee refuse him when hee doth reade as a
 Clarke, the ordenarie shall be fined, and the
 partie discharged, for the Court are Iudges
 of his reading. And the ordenarie is there
 onely

Stam. 133. d.
9. E. 4. 28.

9.E.4.28.

onely to challenge him for his Clergie, for the entrie is, *Legit ut Clericus ideo trahatur ordinario*, by his ablenesse to reade a berte, though he cannot reade without spelling. But if he can reade but here a word & there a word, and no three words together, *quere* whether that be sufficient.

Clergie is the deliuering of him to the ordinarie to be kept in prison.

Stat. 138. c.

If it bee before Judgement, in which case we call him a Clarke conuict, hee shall be tried there by a Iurie of Clarkes. And therefore purging himselfe shall got at large. Therefore is a writ to command the ordinarie to admit him to his purgation. Not purging himselfe, but being found culpable by those Clarkes, he shall be onely degraded.

Stat. 139. b.

But vpon an appeale of Robberie, or such like, no purgation shall bee admitted. The reason seemeth because then the plaintife in the appeale should recouer his goods without cause, when by the purgation it did appeare that the other was not guilty of the felonie.

Stat. 108.

A Clarke conuict shall not answer to any offence committed before.

Prerogative.

5.E.6.Br. forf. 113

Stat. 138.

A Clarke conuict forfeiteth his charters: And shall neuer haue restitution, though he make purgation. Notice must be given to the King of the time before the

partie make purgation. If the Clergie be
after Judgement, in which case wee call
him a Clarke attaint, hee shall remaine in
perpetuall prison.

Stat. 138.

Statutes.

25. H. 8 cap. 3. Reintred. 5. E. 6 cap. 10.

One arraigned vpon an enditement of pety
Treason, wilfull burning of houses, mur-
der, robberie, or other felonie, according to
the meaning of the same Statute, if he stand
mute of malice, or froward of mind, or chal-
lenge peremptorily aboue xx. or will not di-
rectly answer, shall lose his Clergie, in such
manner as hee should if vpon the arraig-
ment he had beene found guiltie.

25. E. 3. pro clero, cap. 4. Conuict of pety
Treason shall haue it.

18. Eliz. cap. 6. None in felonious Rape,
Rauishment, nor Burglarie.

18. Eliz. cap. 6. None in carnall abusing a
woman within ten yeares of age.

25. H. 8. cap. 6. 5. Eliz. cap. 17. None in
Buggerie.

5. E. 6. cap. 9. None for him that robbeth
any person in any part of his dwelling
house, booth, or Tent, in any Faire or Mar-
ket, himselfe, his wife, children, or seruants
then beeing there, or within the precinct
thereof, either sleeping or awake.

4. 5. Wh. 8 Ma. cap. 4. None for him that maliciously commandeth or hireth any to commit petie Treason, or wilful murder, or robberie, in any dwelling house, or in or neere any high way, or within the marches of England against Scotland; or wilfully to burne any dwelling house, or any part thereof, or any Barne hauing corne therein.

25. 8. cap. 3. 5. E. 6. cap. 10. He that doth a robberie or burglarie in one Countie, and is taken with the goods so robbed or stolne, in another Countie, shall lose his Clergie there, as he should doe where the robberie or burglarie was committed.

4. 7. cap. 13. 1. E. 6. cap. 12. Grantable but once to one person, except he be within orders.

4. 7. cap. 13. He that asketh his Clergie the second time shall at a day certaine bring his letters of order, or a certificate.

4. 7. cap. 13. He that hath his Clergie shall be marked in the hand, with an M. if he were conuict of murder, with a T. if he were conuict of other felonie.

1. E. 6. cap. 12. Lords of the Parliament in all cases where Clergie lyeth at the common Law, or is restrained by Statute, shall vpon his prayer bee adiudged as a Clarke conuict, though he cannot reade.

3. E. 13.

8. *Eliz. ca. 4. 6.* 18. *Eliz. ca. 7.* After purgation he shall be put to answer to any such offence (committed before his admission to the Clergie) whereupon Clergie is not allowable, and whereof hee was not before indicted and acquitted, convicted or attained, or pardoned, and shall be demeaned in all things, as if he had neuer beene admitted to his Clergie.

18. *Eliz. cap. 7.* He that is allowed Clergie shall not be deliuered to the ordenarie, but after burning in the hand shall be deliuered forthwith by the Iustices out of prison: yet for further correction, they may detaine him in prison, so that it be not a boue a yeare.

Outlawry is a Iudgement, which in case of criminall offences wee call an Attainder *in it selfe*. So as hee which is indicted of trespassse and outlawed shall pay a fine, he which is outlawed for felonie, forfeiteth his lands and goods: and this fine and forfeiture remaineth, though hee purchase a Charter of pardon afterwards. And there is a writ of Eschete of land for felony, *pro qua ut lagatus fuit*.

So is abiuration an Attainder in it self (and (a) that the strongest that can be being by his owne confession) and a (b) forfeiture of his lands. And there is a writ of Eschete of land for felonie, *pro qua abiurauit regnum*. And therefore (c) he that is hanged vpon Iudgement against him, and becommeth aliue againe, cannot abiure (but

(a) *Stat. 122. 6.*

(b) *4. Eliz. Pl. 262.*

(c) *3. E. 3. Cor. 339*

an abiuration in that case is in escape) for one cannot haue two Iudgements for one offence.

2.H.4.24.
3.R.2.anno 194

Stam. 167. c.
Stam. ibid.

The offender vpon a presentment in the Leet or Sherifes turne shall be amerced.

The defendant in an appeale of felony, being acquitted shall haue Iudgement also to recouer damages against the Plaintiffe. And if the plaintiffe be not sufficient, then Common Law and common reason will that hee recouer his damages against those that procured or abetted the plaintiffe to pursue the appeale. But these damages against the procurers or abettors were to be recouered at the Common Law onely, by writ originall, that is to say, by writ of conspiracie, and not otherwise.

Statutes.

2. Edm. 2. cap. 12. One being acquitted vpon an appeale, or enditement of felonie, may haue the abettors enquired, and haue a Iudiciall writ for his damages against, if the appellat be not sufficient.

8. H. 6. cap. 10. An action vpon the case giuen for him that is duely acquit by verdict against euery procurer of any Iudgement, or appeale of Treason, felony, or trespassse. And like processe shall be therein, as in a writ of trespassse, *vi & armis*.

The plaintiffe recouering shall be allowed his costs of suit.

CHAP. 46.

Of Iudiciall Writs to execute
Iudgements.

THese Iudgements haue their Iudiciall writs belonging to them, both meere Iudiciall writs, for the execution of them, and new originals in the nature of Iudiciall writs, to vndo some matters concerning Iudgements.

Meere Iudiciall Writs in reall or personall actions, are either such as the one is within the yeare and day after the Iudgement rendered, or a *scire facias*.

Those of the first sort are betweene the parties to the recoverie, for otherwise though it be within the yeare, he that recovereth is driven to his *scire facias*, as if it be for debt or dammages recovered against a fem sole, who afterwards taketh a husband, or by or against ones predecessour or Testator, and in the same Court where the recovery was, for if the record of a recovery in an assise of nouell disseisin bee removed within the yeare into the Chancerie by a *Certiorare*, and from thence to the Common place by a *Mittimus*, or removed by writ of error out of the Common place into the K. Bench, & the Iudgement affirmed within the yeare, yet the partie is driven to a *scire facias*. So if a fine executory be remo-

Hh 3

ued

14. H. 7. 15. 19.

15. H. 7. 5.

38. E. 3. *Scire fac.*

77

14. H. 7. 6.

15. H. 7. 15. 19.

ued out of the Cōmon place into the Tre-
surie, and come back by *Certiorare* and *Mit-
timus*, within the yeare no execution shall
be by an *habere facias seisinam*, but by a *Scire
facias* onely. But although the Iudges of
the Common place should all dye within
a yeare after their iudgement, and other
Iustices be chosen, yet in that case execu-
tion might bee well enough without a *scire
facias*: for it remaineth still the same Court,
or if the Iustices in Eyer come into the
Countie, where one hath recovered before
the Iustices of Assise, they may award exe-
cution by a *Scire facias* within the yeare.

Of this kind are vpon recoverie in real
or mixt actions.

F.N.B. 167.

Habere facias seisinam to put him in pos-
session vpon a freehold recovered, in an as-
sise, *precipe quod reddat*, &c.

Habere facias possessionem, vpon a Terme
for yeares recovered, as in an *Electione fir-
me*, &c.

F.N.B. 33. b. & f.

A writ to the Bishop to admit ones
Clarke vpon a presentment recovered in a
Quare impedit, or assise of darrein present-
ment: If the suit be against the Bishop him-
selfe, then this writ may be to the same Bi-
shop, or to the Metropolitan at the parties
choice.

27. El. Co. 11.
In W. L. Harbert's

Those vpon a recovery in personall
actions, are of two sorts, either to haue ex-
ecution of the profits of his land & Chat-
tels, or a *Capias ad satisfaciendum*.

But in Court Barons Execution is
onely

only by distresse, and impounding till the
partie be satisfied: for they haue no power
to sell or deliuer the distresse to the partie,
neither doth any execution by the body lye
there.

In those of the first sort execution shall
be of any (a) land which the partie had day
of the Iudgement rendered, but for (b)
chattels (though it be (c) leases for yeeres)
or any those which he had day of the execu-
tion sued. (d) So as if he sell his goods *bona
fide*, after Iudgement, and before the writ of
Execution sued forth, those goods are not
lyable to the execution: or if a writ of exe-
cution be sued forth, and neuer returned,
and after the defendant alien his goods,
and then the Plaintife purchaseth another
writ which is returned, yet execution shall
not be of those goods, for writs which ne-
uer are returned are not of record, nor of a-
ny force at al. But an alienation made after
the *Teste* of that second writ had beene no-
thing worth.

Of this kind are a *fieri facias*, and a *Le-
uari facias*. *Fieri facias* to leuie execution of
his goods and Chattels only. *Leuari facias*
to leuie execution of the profits of his land
and Chattels. The forme is, *Prædicta pecu-
niam de terris & catallis prædicti* (the defen-
dant) *leuari facias, Ita quod ea habeas in curiâ
tali die præfat.* (the Plaintife) *deliberand.*
And this hauing words that he shall leuie
the money of his lands and chattels, it see-
meth that the Sherife may take the rents

H h 4

pay.

4. H. 6. 17.
22. of. Pl. 72. 1

(a) Old N. B. 163.
42. E. 3. 12.
2. H. 4. 14.
(b) Old N. B. ibid.
2. H. 4. ibid.
(c) 24. Eli.
(d) 24. Eli. ibid. 1

fieri

13. El. Pl. 441.
Old N. B. 163.

payable by the Tenants in execution of the debt, but not to seise the land, and deliuer it to the partie.

Statutes.

West. 2. cap. 18. He that recouereth debt or damages in the Kings Court may at his choise haue a *seire facias* of the land and chattels of the debtor, or a writ for the sherrife to deliuer him all the Chattels of the debtor (except oxen and plow beasts) and the moitie of his land by a reasonable extent till the debt be leuied. And if he bee eicted out of the land, he shall haue an assise: and afterwards a writ of redisseisin if need be.

11. E. 1. Stat. Utton Burnel. A debt acknowledged to a Merchant, before the Maior of London, Yorke, or Bristow, or before a Maior or Clarke (appointed by the King thereunto) shall be enrolled. And if it be not paid at the day, the debtors mouables shall be prised and sold in satisfaction by the Maior, if he haue any within his iurisdiction, else by writ out of the Chancery vpon a Certificate of the Recognisance thither. The prisors to take them of the price if they prise too high, if they haue not mouables sufficient, then he shall be imprisoned til, &c. The like proccesse against pledges, in default of sufficient mouables of the principall.

13. *E. 1. Stat. De mercatoribus.* A debt acknowledged to a Merchant before the Maior of London, or chiefe Wardein of a Towne, which the King shall appoint, or other sufficient men when they cannot attend, and before a Clarke which the King shall assigne, shall be enrolled, and if it be not payed at the day, the debtor if he be a lay man shall be imprisoned by the Maior till, &c. if he be within their power, else by writ out of the Chancerie vpon Certificate of a Recognisance thither. And if he agree with the creditor within a quarter of a yeare after, then al the lands which were the debtors, day of the Recognisance made, and also his goods, shall be deliuered to the creditors vpon a reasonable extent. And of these lands so deliuered, the conisee being ousted, shall haue an assise or redisseisin.

The writs out of the Chancerie shall be returnable before the Iustices of either Bench, and vpon a *Non est inuentus* returned or that he is a Clarke, writs to all the sherifes where he hath lands or goods, shall go forth to deliuer the same vpon reasonable extent, and to what sherife hee will to take his bodie.

The like processe shal be against the pledges if the money be not paid at the day.

If the debtor or pledges dye, the creditor shall haue execution vpon the lands of the heire at his full age. ♦

27. *E. 3. cap. 9.* The Maior of the Staple shal take Recognisance of debt before himselfe

seife and the Constables of the Staple, whereupon default of paiment being made the debtors body shall be imprisoned, and his goods sold in satisfaction (if they bee within the Staple) else vpon a Certificate in the Chancerie, a Writ shall goe out from thence to imprison their bodies, and seise their lands and goods which shall be returned in the Chancerie, and execution thereupon in all respects as in the Statute Merchant. Saue that the debtor shall haue no aduantage of the quarter of a yeare.

5. *H. 4. cap. 12.* A Statute beeing once shewed in the Common place, and the proceffe afterwards discontinued, yet execution may afterwards be awarded without shewing it againe.

11. *H. 6. cap. 10.* He that is in prison vpon a Recognisance, shall not be deliuered out of prison vpon a *Scire facias* against the partie, and suretie thereupon found to the king alone, but shall finde sureties seuerally as well to the King as to the other partie.

23. *H. 8. cap. 6.* Either of the chiefe Iustices, or in their absence out of the Terme, the Maior of the Staple of Westm with the Recorder of London may take Recognisances. And they shall be executed in all respects as a Statute staple.

27. *Eliz. cap. 4.* Euery Statute Staple or
Mer-

Merchant, not brought to the Clarke of Recognifances within foure moneths next after the acknowledging, to enter a true copie thereof, fhall be againft all perfons, their heires, fucceffors, executors, administrators, and assignes onely, which for good confideration fhall after the acknowledging of the fame Statute purchase the land, or any part lyable thereunto, or any rent, leafe, or profit of it.

32. *8. cap. 1.* Lands lawfully deliuered in execution vpon a Iudgement or Recognifance, being euicted without any fraud or default in the tenant before he haue leuied the whole debt and damages, the recouerer and the Recognisee fhall haue a *Scire facias* out of the fame Court where execution was awarded, returnable there full forty dayes after the date And thereupon a new writ of Execution of the nature of the former to leuie the rest of his debt and damages, if the defendant make default, or fhew no good matter in barre.

Magn chart cap. 8. The King fhall not take the lands or rents of the debtors, if he haue fufficient chattels.

Magn chart cap. 18. The goods of the debtor may be attached after his death by the view of lawfull men. That nothing fhall be medled with till the Kings debt be payed.

33. H. 8. cap. 39. All Obligations to the king shal be of the force of a statute staple.

Prerogative.

The King may haue a *distingas* to leue an amercement, or such like, by distresse & sale, whether it be an Amercement in the Leet, or Sherifes turne, or otherwise.

Old N B. 167.

17. El. Co. 12.
Sir Wil. Herberts c
2. H. 4. 6.

40. E. 3. 25.
49. E. 3. 2.
49. E. 3. *ibid.*

A *Capias ad satisfaciendum* is to take his bodie in execution, for satisfying of the partie. And this is alwayes vpon a recoverie in a personall action where a *Capias* lay. Therefore it lyeth not in any reall action as in a writ of dower, or other *præcipe quod reddat*, nor at the Common Law in debt, detinue, account, &c. but in actions of trespassse, and such like. And here an *exigent* shall be awarded vpon the first *Capias*, for if he were taken by the *Capias*, he should pay vnto the King a fine for a trespassse adjudged against him.

Prerogative.

Of this nature are two spectall writs by the Kings prerogative. *Capias pro fine Regis*, and *capias utlagatum*.

1. R. 7. 20.

Old N B. 168.

Capias pro fine Regis, when the partie is adjudged to pay a fine vnto the King.

Capias utlagatum, to take one outlawed, which is a kind of Iudgement and determination of the originall writ as appeared before.

Ther

These are the Iudiciall writs within the yeare and day.

A *scire facias* which lyeth after the yeare and the day, is to warne the defendant by on reconerte in reall actions, for in personal actions debt onely lay after the yeare, which is a new originall, till Westm 2 cap 45. gaue a *scire facias*, to shew cause why the Plaintiff should not haue execution. Therefore here the defendant may plead matters growing after iudgement rendred to oust the other of his execution, as outlawry, &c. or a release of all actions, for in as much as he may plead vpon this *scire facias*, it may well be called an action, though it be but a writ of execution. But notwithstanding that a man which recouereth debt or damages, release to the defendant all actions, yet he may lawfully sue execution by a *fiery facias*, *Capias ad satisfaciendum*, &c. for these cannot be called actions. Here vpon a *Nihil* returned, execution shall bee presently against the parties to the iudgement. But not (b) against Executors, or Administrators, nor in a *scire facias* vpon a (c) Recognisance or (d) Charter of pardon, vpon an outlawrie, or such like, or to (e) repeale a patent, for in all these cases two *Nibils* must be first returned. And therefore a *scire facias* *sicut alias* shall go forth. And the (f) Solemnities of somons, attachment, essoyne, view of land, &c. lie not in this writ.

Old N.B. 163.
27. Eli Coe, 12.
in Sir Will. Harb. 4.

Lit. 116.

3.E. 4. 15.

1. El. Dy. 169.

19. H. 8. 6.

22. H. 6. 41.

2. H. 7. 3.

24. H. 8. Br. per

emptoris 63.

(a) 1. Eliz. ibid.

(b) 1. Eliz. ibid.

(c) 1. El. ibid.

(d) 1. El. ibid.

3. El. Dy. 173

3.E. 4. ibid.

(e) 26. H. 8. 3 Dy.

198.

(f) The Stat. We. 3.

3 cap. 46. doth so

recite it.

Statutes.

Statutes.

Statute 2 cap. 46. For all things recorded before the Kings Iustices, or contained in fines (whether contracts, covenants, Obligations, seruices or customes acknowledged, or any other things enrolled) a Writ of Execution shall be within the yeare, so as the parties shall not need to plead: After the yeare a *Scire facias*. The like is of mesne who by Recognisance or Iudgement is bound to acquit.

In case of life the Iudge may command execution to bee done without any writ.

(a) 22 ass. Pl. 71.

(b) 22 ass. Pl. ibid.

(c) 23 ass. Pl. 2.

(d) 22 ass. ibid.

A woman (a) quick with child, (b) the triall whereof is by a Iurie of women: and the writ for it is called a writ *De ventre inspiciendo*, shall for (c) once and no more, be respited (a) execution, but it is no plea upon her arraignment, to say, that she is enscint, but she must answer to the felonie.

CHAP. 47.

Of new Originals in the nature of Iudiciall writs, to vndo matters concerning Iudgements.

The new Originals in the nature of Iudiciall writs to vndo some matters concerning Iudgements, whether it be the Iudgement it self,

or

or the verdict whereupon Iudgement is giuen, that so the iudgment also may be vndone, or to auoid the execution growing vpon the iudgment, are either writs grounded vpon error, or an Attaint, and *Audita querela*.

Writs grounded vpon Error, are a writ of Error and false Iudgment, both which lie vpon any Error in the proceeding, as well in *Redditiōe executionis*, (as vpon a *Capias ad satisfaciendum*, awarded for damages recovered in a real action) as in *Redditiōe Iudicii*.

16. H. 7. 6.

But Error in Prozesse, may the same Terme bee reformed in the same Court, Whether it be in the Kings Bench (a) or Common place, (b) and that by writ or without.

(a) 7. H. 6. 28.

(b) F. N. B. 31. 2.

12. E. 4. 11.

3. H. 7. 25.

The Prozesse here is a *Scire facias*.

The partie bringing a writ to reverse error in the Iudgement, may haue a *Superfedeas* to stay execution till the error be discussed, Whether it be matter apparent, or matter *en fait*, that is alledged for Errour. But no such *Superfedeas* shall bee vpon an Attaint; for that which is found by the oath of twelue men is intended true till it be reversed, but it may as well be intended that there is an errour in the Record, as not.

A writ of Error is vpon an Error in Court of Record.

And may be sued in the Kings Bench,

or

of Parliament.

(a) F.N.B. 21.1.
 (b) 13. El. Pl. 393
 (c) 14. H. 7. 1.
 3. Gl. Dy. 250.
 31. El. So bolden in
 the Common place,
 contrarie to Fitz.
 N. B. 21.1.

In the Kings Bench when the error is in any inferior court, whether the iudgement be giuen in the Common Place, (a) Chancerie, (b) Citie, (c) or Gorporat towne, as before the Maior of Excester, or other Court of Record, for no Writ of Error is returnable in the Common place.

Statutes.

9 Ric. 2. Cap. 3. If tenant for life, or in taile, after possibilitie of the issue extinct be impleaded, and iudgement passe against him, hee that is in the reuerfion at the time of the iudgement, shall haue a Writ of Error vpon an error in the record of the same iudgement, as well in the life of such a tenant, as after his death. And if at any time of reuerfing of the iudgement, the Tenant for life, &c. be aliue, he shall not bee restored, &c. his possession, with the mesn, issues, and he in the reuerfion to the arrerages of the same rent, if any be due. But if the tenant for life, &c. be dead at the time of the reuerfing of the iudgement, then hee in the reuerfion shall bee restored to possession, with the issues after the death of their Tenant for life, &c. and the arrerages of rent due in his life.

31 Ed. 3. Cap. 12. Errour in the Exchequer shall be reuerfed before the Chancellor, and Treasurer, taking to them the Iustices,

stices, and other such sage persons, as they thinke fit. And after the roll shall be sent backe into the Exchequer, to make execution.

31. **Eliz Cap 1.** If either Lord Chancellor or Lord Treasurer, or both the chiefe Iustices, come at the day of adiournement in a writ of Error in the Exchequer, it shall be no discontinuance.

32. **H. 8. Cap 30. made perpetuall. 2. C.**
Cap. 22. After a verdict tried by twelue men, or more, in any suit in Court of Record, no iudgement shall be stayed or reuerfed for any mispleading, lacke of color, insufficient pleading, miscontinuance, discontinuance, miscontaining of Processe, misioyning of the issue, lacke of Warrant of Atturtrie: for the partie against whom the issue is tried, or any other default or negligence of the parties, their counsellors, or Attornies.

18. **Eliz. Ca. 4.** After a verdict of twelue men, or more, in any suit in Court of Record, iudgement shall not be stayed or reuerfed for default in form, or lack of form, as false Latin, variance from the Register, &c, in any writ originall or iudiciall, declaration, bill, or plaint, or for want of any writ originall or iudiciall, or by reason of any imperfect or insufficient returne, or for want of any Atturney, or for any manner of de-

default in processe vpon, or after the praier or voucher.

27, Eliz. Cap 5. After demurrer ioyned or entred in any suit in Court of Record, the Iudges shall proceed and giue iudgement according as the verie right of the cause and matter in law shall appeare vnto them, without regarding any imperfection, defect, or want of form in any writ, return, plaint, or declaration, or other pleading whatsoeuer; except those onely which the partie specially & particularly shal set down and expresse together with his demurrer. And that no iudgment to be giuen, shall be reuerfed by any writ of Error, or by any such imperfection, defect, or want of form, as is aforesaid, except as only be before excepted.

Thesetwo last statutes extend not to suits of felonie or murder, nor to enditemēt or presentment of them, or of treason, or other matter, nor to processe vpon any of them, nor to any suit vpon a popular or penall statute.

1. H. 7. 19.
23. El. Dy. 375.

In the Parliament, when the error is in the Kings Bench: And is returnable befoze the king and the lords only. The order wherof is this, viz. The party that sueth it must haue a bill from the king indorsed, and thereupon the Chancellor must make him a writ of Error, and then the chiefe Iustice of the Kings Bench shall bring with him (in the Parliament) vnto the Lords in the inner Parliament Chamber, the

the writ of Error, and the bill endorsed, and all the Rols wherein are contained the pleas and proceſſe in which error is ſuppoſed, and there ſhall leaue the tranſcript of all the Record and Proceſſe, &c. together with the ſaid writ of Error with the Clarke of the Parliament, who ſhall haue the cuſtodie thereof. And by the Lords onely, and not the Cominalty ſhal a Steward be aſſigned, who together with the Lords, by aduiſe of the Juſtices, ſhall proceed to amend the error.

Statutes.

27. *Eliz. cap. 8.* An error in the Kings Bench in an action of debt, detinue, covenant, accompt, action vpon the caſe, *Eiectio- ne firme*, or treſpaſſe firſt commenced there (where the King is no partie) may at the parties choiſe be reuerſed in the Exchequer chamber before the Juſtices of the Common place, and ſuch Barons of the Exchequer as are of the choiſe, or fixe of them at the leaſt, other then for error concerning the iuriſdiction of the kings Bench, or want of forme in a writ, returne, plaint, bill, declaration, pleading, proceſſe, verdict, or proceeding whatſoeuer. And vpon the Iudgement affirmed or reuerſed, the Record ſhall be ſent backe into the Kings Bench, to proceed and award execution thereupon.

The partie griued with ſuch reuerſall or affirmation, may haue a writ of Error in the

Parliament as vpon iudgement in the kings Bench.

31. *Eliz. cap. 1.* Any three of the Iustices and Barons (if the full number come not) may receiue writs of error, award, processe, prefixe dayes for the continuance of the writs of Error.

F.N.B. 17. & 18.

False Iudgement is vpon error in a base Court.

Thus much of writs of Error and false Iudgement, there folloiweth an Attaint, and *Audita querela*.

18. E. 4. 9.

Attaint is to enquire whether a Iurie of 12. men gaue a false verdict. That so the iudgement following vpon it may bee reuerfed, and the partie restored to all that he hath lost, that is to say, if it bee the defendant to his damages and whatsoeuer else: if the plaintife, to his title, his action, &c. for an attaint lyeth not till Iudgement bee giuen, and if the Writ beare date before it shall abate. And this lyeth onely vpon a verdict by xij. for if hee lose in a Writ of right no attaint lyeth neither by the Common Law nor Statute, because it passeth by a Iurie of more then xij. that is to say, the grand assise. No more doth it in an enquest of office, & vpon a writ to enquire of damages in trespassse, for that may bee by a lesse number then xij.

9. ass. Pl. 21.

Br. attaint. 42.

39. H. 6. 1.

3. H. 6. 39.

And this must be brought in the life of him for whom it passed, and of some of them that gaue it, whom we call the petie Iurie,
for

for if either the (a) partie himselfe, or (b) all the petie Iurie bee dead, or (c) all of them but one, the attaint faileth, and lyeth onely upon a verdict in personall actions other than trespasses: for it seemeth that there was an attaint at the Common Law, because Westm 1. cap. 37. speaketh of attaints without expressing any penaltie. And 34. E. 3 cap. 7. giueth it in plea reall as well as personall. So as it lay before in a plea personall, debt, detinue, covenant, and such like: but not in trespassse, for that is giuen by statute. And the reason why it lay not in an action of Trespassse, is because then vpon reuerfing of the recouerie the K. shall lose his fine. Neither did it lye at the Common law in a plea reall of land, for Westm 1. cap. 37. giueth it in that case. And the reason of that was, because he that loseth may haue a writ of right.

(a) 25. H. 8. Dy. 3
26. aff. Pl. 12.
(b) 13. E. 4. 5.
(c) 34. aff. Pl. 6
36. aff. Pl. 2.

Br. attain. 42.

The Iurie here called the Grand Iurie, are 24. who are to be warned the first day. And the proceffe is against the partie summons, resommons, as in a mortdancester, darrein presentment, and *Iuris utrum*, against the petie Iurie, *vi. nire facias* and distresse.

OLD N. B. 111.

OLD N. B. 112.

The petie Iurie must bee all present when the grand Iurie is taken, else it can neuer betaken, which was a great mischiefe at the Common Law, for it might be that some of them had nothing, and so would neuer appeare, And may plead in bar of the attaint, as a release, arbitrement, &c. for this

22. H. 6. 8.

35. H. 6. 30.

19. *47. Pl. 131*34. *H. 8. Dy. 33.*

excuseth them of their false oath, but not in abatement of the writ, as another attainr hanging, that the demaundant had ioynly with another not named in the writ: or if a woman bring it to say she is couert, &c.

The Plaintife in the attainr can give no more evidence then was given at the first. But the defendant in affirmance of the first verdict may.

Statutes.

Westm. 1. cap. 37. An attainr is giuen in pleas of land or of freehold, or of things that touch freehold.

1. E. 3. cap. 8. In writs of trespassse as well vpon the principall as the damages, though Execution be not sued of them.

28. E. 3. cap. 8. And that as well by bill as by writ, without regarding the quantitie of the damages.

34. E. 3. cap. 7. An attainr is giuen in cuerie plea, reall as well as personall.

9. Ric. 2. cap. 3. Giuen to him in the reuersion lyuing his Tenant for terme of life vpon a recouerie against him, with restitution of the Tenant that lost his possession, with the mesne issues. And of him in the reuersion to the arrerages of his rent. But if the Tenant that lost be either dead, or were of couin with him that recouered, then restitution shall be to him in the reuersion of the

the possession it selfe, with the mesne, issues and arrerages, after such death and recouerie by couin.

14. **℥.2.** Of Sherifes and greene waxe, if the petie Iurie appeare not at the first grand distresse against them, or a *Nihil* be returned the grand Iurie shall be taken by their default.

23. **℥.8. cap.3. made perpetuall 13. ℥.13. cap.9.** In a suite before Iustices of Record not concerning life, an attaint is giuen against the petie Iurie, and euery of them, and the partie himselfe.

The processe against the petie Iurie and frand Iurie, shall bee sommons and resommons, and distresse infinite.

Open proclamation shall be made in the Court where the distresse is awarded more then xv. dayes before the returne of the distresse.

The graund shall be taken in default of the defendant, or petie Iurors, or any of them.

The petie Iurie that appeare beeing the same persons, and the writ, processe, returne, assignment of the false oath good, shall haue no answer, but that hee made a true oath, except the plaintife or demaundant hath beene *non suite*, or discontinued, or had iudgement against the petie Iurie vpon his suite of attaint. But the partie himselfe shall plead any thing onely in barre of the at-

taint. Notwithstanding which plea, the grand Iurie shall without delay enquire of the truth of the verdict. Such a day shall be giuen in the processe as in a Writ of dower, and no effoyne or protection allowable.

By the death of the partie, or one of the petie Iurie, the attaint shall not abate, nor be deferred against the rest as long as two of the petie Iurie shall liue.

Euery attaint shall not bee in the Kings Bench, or Common place, and the *Nisi prius* granted vpon the distresse by the discretion of the Iustices. And euery of the petie Iurie may be by Atturny. The *non suit* or release of one when there be diuerse Plaintifes or demaundants in an attaint shall not preiudice the rest.

Euery one of the grand Iurie must haue xx. markes a yeare land of freehold, out of auncient demesne. But if the value of the thing in suite bee vnder the value of fortie pounds, then v. marks a yeare, or a C. marks worth of goods sufficeth for default of such sufficient Iurors, within the same Countie, a *Tales* shall be awarded vnto the next.

II. *§ 6. cap 4.* The Plaintife shall recouer costs and damages against the Iuror or defendant that pleads a fained plea in delay. *Audita querela* is for one being or to be in execution to relieue him vpon good matter of discharge which hee hath no meanes to

to plead. As if one having a release be taken in execution in one Court, as in the Common place, by writ out of another (as out of the Chancerie) returnable in the Common place, vpon a Recognisance, or condemnation in the Chancerie. (But if the Recognisance or condemnation had beene in the Common place, then they might haue awarded processe vpon that matter) If execution be sued of a Recognisance by *Fieri facias* or *elegit*: (but not by *Scire facias*, for there he hath day to answer, therefore it is his folly if he come not in and plead it, that is to say, where the Sherife returneth him warned: otherwise it is vpon a *Nihil* returned) if a release or acquittance be made vnto him after the *Scire facias* sued, if after verdict and before iudgement they haue put themselves into abittrement.

22.H.3.56.

48.E.3.10.

The processe wherethe *Audita querela* is sued, before execution is a *venire facias* and distresse, and vpon default after appearance and plea pleaded, a *distringas ad audiendum iudicium*, for thereby Iudgement is to bee giuen against him. And in this case of an *Audita querela* sued before execution, he may haue a *Supersedeas* vpon good matter of discharge surmised in the writ of *Audita querela*, to stay for once the execution vpon *lureties*, so (a) can he not beeing in execution. Neither (b) can he haue a *Supersedeas* before execution oftner then once, though (c) it bee vpon new matter. But if the

12.H.4.6.15.
By *Audita querela*.
15.

22.H.6.56.

12.H.4. *ibide*

47.E.3.1.

17.E.3.3.

28.E.3.8

614 N.B.66.

(a) 11.R.2. *Super-*
sed. 14.

(b) 1.H.7.12.

21.H.6.34.

(c) 47.E.3.28.

F.N.B.104.7.

cont.]

(d) Au-

(4) F. N. B. 2049.

22 H. 6. 36.
15. E. 4. 5.

(d) *Audita querela* bee abated for variance from the Record, or such like, there in another *Audita querela* he may haue a second *Supersedeas*.

After execution the processe is a *Scire facias*, as if he be brought in by a *Capias ad satisfaciendum*, for there hee is in prison, otherwise it is if he be not taken by a *capias*, but come in *gratis*. And this *scire facias* is onely for the more hasty expedition of the partie that is in prison, for if the processe should be by distresse infinite, peradventure the partie would lose issues, to keepe the others body in perpetuall prison.

CHAP. 48.

Of certaine speciall writs wherein no Processe lyeth.

THus farre of an Action, and the severall parts of it. And of writs both Originall and Judiciall, that begin or prosecute the action. Beside which, there be certaine other originals out of the Chancerie, which are as it were speciall anomalies and exceptions from the former. Being not directory to bring any matter into plea or solemn action, but onely Commandatorie or Prohibitorie to do or leave something undone. And therefore no Processe at all lyeth in these

these writs, but onely an (a) Attachment (a) F.N.B.6.b.
vpon a contempt, for not executing or ob- 185 d.134.a.
beying them. Old N.B.15.35.

Of which nature are,

1. **Commandatorie ones**, these that fol- F.N.B.263.c.
low. *Dote assignanda*, is for the wife of the
Kings Tenant, when the King is entit-
led by office of land, whereof she is dow-
ble, alwayes directed to the Escheator. And
may bee either to deliuer her such part of F.N.B.263.d.
her land as is already assigned to her in
the Chancerie for her dower, or for the Es-
cheator himselfe to assigne her part vnto
her.

If her husband held in chiefe, then she F.N.B.263.d.
must first take an oath in the Chancerie,
not to marrie without the Kings licence,
before she can haue this writ. But if he held
of the King by Knight seruice, as of a man-
nor, or if hee held from one that is in ward F.N.B.264.a.
to the King by reason of his nonage, there
she shall not need to take any such oath.

Homagio capiendo for tenant by homage 45.E.3.23.
ancestrell to compell the Lord to receive
his homage, and is to saue his warrantie
and acquitaile, which he loseth if he be im-
pleaded before the Lord haue receiued his
homage.

Scutagio habendo for the Lord to haue es- F.N.B.83.c.
cuage of his Tenants by Knights seruice,
when the same is due, by reason of any
voyage royall made by the King in proper
person, or by his Lieutenants against the
Scots, or them of Wales.

And

F.N.B. 82.4.6.

And to make his sonne a Knight, or to marrie his daughter, for the Lord to have this aide of his Tenants, where it is due.

(a) F.N.B. 230.4

(b) F.N.B. 231.8

(c) F.N.B. 230.4

(d) F.N.B. 230.4

C. 231.8.

(e) F.N.B. 230.4.

(f) *Fit ibid.*

F.N.B. 229.6.

De corrodio habenda, & de Annua pensione, for the King. The (a) first to have a corrodie for his servant, the (b) other to have a pension granted to his Chayleyn, (c) till he be promoted to a benefice. Both (d) these where the same are due. As (e) of common right a Corodie is due from euery Abbey, Priory, or other house of Religion, whereof the King is founder in the right of his Crowne. A (f) pension from euery Bishopricke in England or Wales.

De libertatibus allocandis, for one whether a singuler person, Burgis, Citizen, or other, or a body corporate, empleaded before the Kings Iustices of the one Bench or other, Iustices errants, Iustices of the forest, &c. to haue the liberties granted them by the King, or his progenitors, to bee allowed where the Iustices wil not make allowance of them. And therefore is to be directed to the Iustices themselues, not to the Sherife, for he is but their officer, and subiect to be amerced by them, if he do not his office as he should.

F.N.B. 15.

De executione iudicij, to haue a Iudgment executed, whether the same were giuen in a Court Baron, viz. the Court of the Lord, Hundred, or Countie Court, by writ of right *Iustices*, or plaint without writ, or in Court of Record. The same to be directed

And to the Sherife, if iudgement were given before the Baylife in the Hundred or Lords Court, to the Coroners if it bee before the Sherife in the Countie Court, to the Iustices themselves if it be in a Court of record. And this writ is a *Iusticies*.

De restitutione temporalium, where the *temporalities* before seised into the Kings hands, are to be restored to a Pryor or Bishop elect and consecrate. And this must be directed to the Eschetor. F.N.B.169.

De securitate pacis, for him that is in feare of corporall hurt, to be killed, beaten, assaulted, &c. or of the burning of his houses, to be secured of peace in that behalfe, against the partie whom he feared And may be for either of these causes alone, or for both ioyntly in one writ, where a corporall oath must bee taken by him that standeth so in feare. And that was wont to bee in the Chancerie before some Master of the Chancerie, by the auntient course of Law. But now they vse to purchase such writs by their friends there without taking of an oath, which maketh them to be sued forth many times more for the vexation of the parties then vpon any iust cause. The common forme of this writ since the Statute 1. E. 3. cap. 16. which appointeth Iustices of peace, is for the ease of the people somewhat altered, and it is called a *supplicavit*, directed sometimes to the Iustices of peace, and to the Sherife, sometimes to the Iustices or one Iustice sole, and sometimes to the Sherife F.N.B.79.

Sherife onely to compell the partie to find sufficient mainperors in a reasonable sum of money, that he shall neither do nor procure any bodily hurt, or burning of the parties houses; or vpon refusall, to commit him to the gaole till he doe.

Old N.B. 33.

(a) F.N.B. 54.

De vi Laisa remouenda, to remoue all lay force in any Church, especially where debate is betweene two persons of a Church of prebends about the title, and one with force and armes holdeth the other out: and (a) this writ may be as well vpon the bare surmise of the Incumbent or partie grieved, without any Certificate made by the Bishop into the Chancerie, of such force as vpon and by reason of such Certificat. And there bee two seuerall formes of writ in these two cases, but hereby the Sherife may not remoue the Incumbent out of possession of the Church, whether he be in by right or wrong, for then he may haue a writ to restore him againe, but onely remoue the force: and this writ is returnable or not returnable at the parties pleasure that doth sue the same, and may be returnable in the Common place, as well as in the Kings Bench.

F.N.B. 185. d.

Of cleansing streets to haue the wayes, streets or lands of a Towne Corporate, of the Suburbs of it, to be made cleane, and so kept, when they be stencht, by dung and filth, hogsties, and such like, whereby the ayre is corrupted and infected, to the indangering of the health, or other great discommoditie

moditi to the Inhabitants or Trauellers that way. But it seemeth that no such writ lyeth for the Village in that Countrey, though they be not kept cleane, but for corporate Townes onely.

De Leproso amouendo, to remoue a Leper or Lazer, that will come abroad to Church among his neighbours from the companie of men to some solitarie place of dwelling. And that is for feare of infecting of them: but if hee will keepe in his house, and not come among his neighbours, then it seemeth he shall not bee remoued thence, nor that any Lepers or Lazars shal be remoued by this writ, but onely such as appeare to be so by their speech, vlcers, rottennesse of flesh, stinke, and such like, and not those that though they be infected inwardly, yet appeare not so without.

F.N.B. 234.

Old N.B. 34 & 35

De excommunicato capiendo, vpon a signifi-
cauit, so we call the ordinarie Certificate into the Chancerie, that one excommuni-
cate standeth out fortie dayes, and will not be iustified by the sensures of the Church to imprisonment, and so to iustifie him by his bodie, till he satisfie holy Church for his contumacie and contempt, and this writ also is a Iusticies.

Old N.B. 35. a.

F.N.B. 63. a. f.

De excommunicato deliberando to deliuer him out of prison when the Church is satisfied, and hath absolved him.

De cautione admittenda, when one taken by an Excommunicata capiendo offereth sufficient pledge or caution to obey holy Church,

F.N.B. 63. a.

(a) F.N.B. *ibid*

(b) F.N.B. 63 d.

F.N.B. 269.

F.N.B. 163. n.

Church, which is refused to haue that con-
tion admitted and to be deliuered: and may
be either to the (a) ordinarie himselfe to
command him to bee deliuered, which the
ordinarie may doe by word, or to (b) the
Sherife to make such deliuerance, and then
it is withall, a *de excommunicato delibe-
rando*.

De heretico comburendo, to cause one con-
uicted for an Hereticke to bee burnt. And
this as the other writs to bee directed to the
Sherife, the partie being committed by the
Clergie into the secular power. But by the
Statute 2 H. 4. cap. 15. Euery Bishop in his
Diocesse may conuict a man of heresie, and
cause him to abiure, and after conuict him
anew, and condemne him to the fire, and
thereupon make a precept to the Sherife to
take and cause him to bee burnt, and the
same a sufficient warrant to the Sherife
without any writ of the King: but that Sta-
tute is repealed by 25. H. 8. ca. 14. So as now
the ordinarie cannot commit him to the lay
people to be burnt without the Kings writ
first purchased.

De coronatore exonerando, to discharge a
Coroner of his office vpon iust cause. As if
he cannot extend his office for other busi-
nesses of the Kings that hee is imployed a-
bout in the same Countie, or bee old and
feeble, or vnfit for the office, and haue not
lands and tenements sufficient in the coun-
tie whereupon he may dwell according to
his state, or haue the Palsey, or dwell in the
remote

remote parts of the shire, so as hee cannot
conueniently exercise the office, or such
like.

And this writ is directed to the Coror. *F.N.B. 114*
ner himselfe.

De exonerando viridario forestæ, to dis-
charge a verder of the forest in like sort.

De coronatore eligendo, to chuse a Coror-
ner, two or three if there be need of so ma-
ny, in full Countie, by the freeholders of
the Countie. And this is commonly vpon
the death or discharge of some of the Co-
roners, when it is vpon the discharge, then
this writ renteth the cause of their dis-
charge. *F.N.B. 163 b*

De electione viridariorum forestæ, to chuse
a verdor of the forest in like sort. *Conge*
deslier, to Deane and Chapter, or such like
to chuse their Bishop. *F.N.B. 164 a*

Statutes.

25. H. 8. cap. 20. For the election, nomina-
tion, presentation, inueſting, and consecra-
ting of Archbishops and Bishops.

A writ for the royall assent to signifye to
the ordinarie his assent to the election of
an Abbot, &c. & to will him to execute that
which belongeth to him, therefore this is al-
wayes to the ordinarie himselfe.

De securitate inuenienda qd se non diuertat
ad partes extra sine licentia Regis, to compell
one to find sufficient mainpernours in a
reasonable summe of money, not to go into
foraine
R b

forreine parts out of the Realme, without the Kings licence, nor any thing there attempt in contempt or pzeiudice of the king, or hurt of the people, nor send any thither for any such cause. And as a *Supplicavit* may be directed to the Iustices of peace, or Sherife, or both. And euery one vpon surmise to the Chancellour may sue this writ for the King: for by the Common Law euery one that will may goe out of the Realme for merchandize, trauaile, or other cause at his pleasure without the Kings licence. But the king may restraine any subiect by this writ, or by his priuie seale, or signet, or by proclamation without writ, or other commandement, because euery man is bound of common right to defend the King and his Realme.

5. Ric. 2. cap. 2. None shall go out of the Realme without the Kings leaue vpon pain of forfeiture of his goods, except the Lords and other great men of the Realme, known Merchants and the Kings souldiers.

Statutes repealed. 4 Jac. cap. 1.

All *dedimus potestatem*. The principall of them are these.

Dedimus potestatem, to giue the Kings rovall assent to the election of an Abbot, or such like, made or to be made, and to signifye so much by his letters to the ordinarie, that he may doe that which belongeth to him, and to receiue fealty, &c. commanding the partie to do the premises. And therefore is directed to the partie himselfe that must

must do these things.

Dedimus potestatem de fine levando, to certain persons to take the acknowledgement of a fine out of Court, when one that hath agreed in the Kings Court to leue a fine, is so feeble that he cannot trouble, for every such *dedimus potestatem* supposeth a writ of covenant, or such like, hanging. And they to whom this Writ is directed, must go in proper person to the parties to take the consance, which being certified to the Kings Iustices of the Common place, the fine shall be engrossed. The chiefe Iustice of the Common place may take the acknowledgement of a fine without any *dedimus potestatem*, so can no other Iudge, *de vigore Iuris*. But a Iustice of assise by a generall patent with a clause of *non obstante* may

F.N.B. 146g.
Old N.B. 103.

F.N.B. *ibid*.
1.H.7.9.
Old N.Br. *ibid*.

1.H.7.9.

Statutes.

Stat. Carille. 15. E. 2. The *dedimus potestatem* shall be directed to two of the Iustices, or one Iustice and a knight.

Prerogative.

Dedimus potestatem de Attornato faciendo, for the Iudges to admit an Attorny for one in a suite, whether it be for the plaintife or defendant, demaundant or tenant, and in what action or suite soeuer the same be. This writ must be directed to the Iudges themselves, and groweth by the Kings prerogative,

F.N.B. 135.2.

rogative, for at the Common Law the parties must appeare in proper person, not by Atturmy, although the Statutes gave power afterwards to make Attornies in diuerse cases; as appeareth before. But before those Statutes it seemeth that the King might grant to any man to make an Atturmy in any suite. And one reason thereof was, because it is no error though the Iudge admit any plaintife or defendant to make an Atturmy, where by the Law he ought not.

2. **Prohibitory ones are these that follow.**

A protection *cum clausula nolumus*, to free ones possessions, land, rent, corne, cattell, carriage, &c. that nothing be taken against his wil for the Kings businesse, by his officers or ministers. This may be as well for a seculer as a spirituall person, and groweth by the Kings speciall fauour.

Persons or other spirituall persons not to be charged to the payment of sittenes, for goods in their possession annexed to their Churches.

Quod clerici non eligantur in officium balui, for a Clark, so is euery termed that is within holy orders, not to be chosen an officer, as Bailife, Beadle, Reeue, &c. for his lands, and this writ reciteth that by the common Law they ought not, and commandeth that if any distresse or amerciament be leuied, in this respect, it be restored.

A prohibition to forbid tenant in dower, or by curtesie of England, or gardein by knight service, or in socage, to commit waste

Old N.B. 29. a.
& b.

F.N.B. 176. a.

Old N.B. 175 b.

F.N.B. 55. c.
24 H. 8. 6. Shelly.

Wast to the destruction of the inheritance. But this writ lieth not against lessee for life or yeares, for they come in by their owne lease: but in the other cases before the Law maketh their estate.

The forme of the writ.
F.N.B. 8. s.
14. H. 8. *did.*

Statutes.

Glocest. cap. 5. A man may haue a writ of wast out of the Chancery against tenant by curtesie or dower, or otherwise for terme of life or yeares, and being attaint of wast, hee shall forfeit the waste and treble damages.

Westm. 2. cap. 14. The proceffe in a writ of wast shall be sommons, attachment, distresse: and if he come not, then a writ vnto the sherife, taking with him xij. men to goe to the place wasted, and there enquire of the waste, and vpon that waste returned, iudgement shall be.

11. H. 6. cap. 5. Where the tenant grants ouer his estate, but notwithstanding takes the profits, and commits wast, an action lies against him.

Mag chart. ca. 4. The gardein may not comit wast vpon pain to lose the wardship.

Cap. 5. And must repaire and susteyne the houses, of the profit of the land.

Glocest cap. 5. If the gardein commit wast, and the wardship lost answer not the value of the damages before the heires age, the he shall render the damages to the heire.

Artic. super chart. cap. 18. Escheton committing waste vpon wards lands, shall

answer damages as is ordained before by Statute against them that do wast in wards lands. So of a Subeschetor, and if he be not able his master shall answer for him.

36. **E. 3. cap. 13. Stat. 1.** If the Eschetor haue a ward to answer to the King of the issues, and commit waste, the heire shall haue an action of wast as well within age as of full age, and whilest he is within age, if he cannot, his next friends shall haue the suite for him.

14. **E. 3. cap. 12.** The heire when he cometh to full age shall haue an action of wast against the gardeins and fermours to whom the King shall let the land in ward according to that Statute.

Westm. 2. cap. 22. A writ of wast given for one Iointenant or Tenant in Common, against another, wherein the defendant to be at his choise to take his part in certaine (and then to haue for his part the place wasted) or to agree from thenceforth to take nothing more then his Companions do.

Glocest. cap. 13. Hanging a plea by writ the Tenant may not commit wast, nor estreptment of the land in demaund, and if he do, the demaundant may haue a writ to cause the land to be kept that no wast nor estreptment be done.

De quo minus for grantee of estouers, as houseboote or heyboote, &c. to restraine the granteors from committing wast, so as he cannot haue his estouers.

De exoneracione scille, for Tenants by suit of

of Court, or other rent or seruices that they bee not distreined to doe the same for such time as they ought to hold the land discharged. As one which is in ward to the King, a woman indowed in the Chancerie of lands so in ward, and the Tenants parauaile of such a ward, that is to say, where the other Lords of whom the heire holdeth do distreine, for during such time as the heire is in ward, either to the King or to his Committee, he is to doe no suite of Court or other seruices, and if any distresse be taken, it is by this writ to bee restored. F. N. B. 158.

De deonerando pro rata, to discharge the tenant of parcell of the land, according to the rate of his land when hee is lawfully distreined for all the rent or seruices. As where a man which holdeth C. acres of land by the seruice of repairing a bridge, alien in fee xx. acres to one man, and xx. to another, and after vpon this presented one of the alienees, is onely distreined to make reparation, or where the Kings Tenant by fealtie and rent alieneth parcel of the land, and the kings officer distreineth the alienee for all the rent, for the King is not bound by the Statute of *Quia employes terrarum*, which will that the feoffee shall hold *pro particula*, but that he may distreine for all the rent in the part of the alienee, but such a writ lyeth not where one that holdeth of a common person by fealtie and rent, alieneth part of his land, for there the Statute

F.N.B. 226.j.

it selfe restraineth the Lord that he cannot distreine the alience, but after the rate and value of the land which he hath purchased
De essend. quiet. de Theolonio to officers of Townes or other places not to griene spirituall persons, or other that ought to be quit of paying of toll, marage, pannage, pontage, &c. whether by the kings grant or by prescription.

F.N.B. 165.42.

De non ponendo in Iuratis, to discharge Deeres of the Realme, or other persons privileged: as Clarks that are in the kings service, &c. from being of Iurie, vnlesse their presence be for any spectall cause necessarie. And this may be directed either to the Sherife not to put them into Iuries, or to the Iudges to discharge them. But if a Piere of the Realme be returned, hee must be sworne or lose issues, if hee appeare not, vnlesse he bring the writ.

F.N.B. 85.A.

Ne eueas regnum, to the party himselfe to inhibite him to go into fozein parts without the Kings licence.

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